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WILLIAM L. BROWN
M. C. L. L. L.
UNIVERSITY OF PITTSBURGH

OF THE

C O M M O N W E A L T H

OF

P E N N S Y L V A N I A,

FROM THE FOURTEENTH DAY OF OCTOBER, ONE THOUSAND
SEVEN HUNDRED, TO THE TWENTIETH DAY OF MARCH,
ONE THOUSAND EIGHT HUNDRED AND TEN.

Republished.

UNDER THE AUTHORITY OF THE LEGISLATURE.

WITH

NOTES AND REFERENCES.

IN FOUR VOLUMES.

VOL. II.

PHILADELPHIA:

PRINTED AND PUBLISHED BY JOHN BIOREN, NO. 88, CHESNUT-STREET.

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1864

LAWS
OF
PENNSYLVANIA,

REPEALED, OBSOLETE, AND EXPIRED.

- A. D. 1781. **C**HAPTER 932. A supplement to an act, entitled an act to permit the exportation of flour of wheat from this state, by sea, under certain limitations and restrictions: passed 7th June, 1781; recorded in law book vol. I. page 437; expired.
933. An act to raise effective supplies for the year one thousand seven hundred and eighty-one: passed 21st June, 1781; recorded in law book vol. I. page 438; obsolete.
935. An act for recruiting the Pennsylvania line in the army of the United States: passed 25th June, 1781; recorded in law book vol. I. page 446; expired.
937. An act for raising additional supplies for the year one thousand seven hundred and eighty-one: passed 25th June, 1781; recorded in law book vol. I. page 450; obsolete.
939. An act to make more effectual provision for the defence of this state: passed 28th September, 1781; recorded in law book vol. I. page 455; expired.
940. An act to alter and supply an act, entitled an act for recruiting the Pennsylvania line, in the army of the United States: passed 29th September, 1781; recorded in law book vol. I. page 457; expired.
941. An act to vest the title of a messuage and lot of ground, in the town of Lisburn in John Rankin, esquire: passed 29th September, 1781; recorded in law book vol. I. page 458; private act; obsolete.
942. An act to give relief to certain persons taking refuge in this state, with respect to their slaves; passed 1st October, 1781; recorded in law book vol. I. page 459; expired.
943. An act to dissolve the marriage of Jacob Billmeyer with his wife Mary Billmeyer, late Mary Eichelberger: passed 1st October, 1781; recorded in law book vol. I. page 460 private act; obsolete.
945. An act for the defence of the frontiers of this state, and for other purposes therein mentioned: passed 22d December, 1781; recorded in law book No. I. page 462; obsolete.
946. An act for the support of government, and the administration of justice: passed 27th December, 1781; recorded in law book No. I. page 464; repealed 17th Sept'r, 1785, and 25th of March, 1785.
1782. 949. An act for preventing and punishing the counterfeiting of the common seal, bank bills and bank notes of the president, directors and company of the Bank of North America, and for other purposes therein mentioned: passed 18th March, 1782; recorded in law book No. I. page 468; repealed 13th September, 1785. See chap. 1267.
950. An act to raise effective supplies for the year one thousand seven hundred and eighty-two: passed 27th March, 1782: recorded in law book No. I. page 469; obsolete.

A. D.

1782. CHAP. 952. An act to incorporate the subscribers to the Bank of North America : passed 1st April, 1782 ; recorded in law book No. I. page 484 ; repealed 13th September, 1785 ; revived ; see chap. 1267.
954. An act for guarding and defending the navigation in the bay and river Delaware, and for other purposes therein mentioned : passed 9th April, 1782 ; recorded in law book No. I. page 479 ; repealed 17th September, 1783.
956. A supplement to the act, entitled, " an act for regulating navigation and trade in this state," passed 10th April, 1782 ; recorded in law book No. I. page 490 ; repealed 20th September, 1782.
957. An act for the relief of John Amiel, an insolvent debtor, confined in the old gaol of the city and county of Philadelphia : passed 13th April, 1782 ; recorded in law book No. I. page 492 ; private act ; obsolete.
960. An act for settling and adjusting the depreciation of the pay accounts of sundry officers, non-commissioned officers and privates, belonging to the state of Pennsylvania, agreeable to the resolves of the United States, in congress assembled : passed 13th April, 1782 ; recorded in law book No. I. page 514 ; obsolete ; see chap. 1636.
961. An act more effectually to encourage the killing of wolves : passed 13th April, 1782 ; recorded in law book No. I. page 516 ; repealed March 10th, 1806.
- ✓ 962. An act to redress certain grievances within the counties of Westmoreland and Washington : passed 13th April, 1782 ; recorded in law book No. I. page 516 ; obsolete.
963. An act to encourage the apprehending prisoners of war, who have, or hereafter may, escape from the place of their confinement, and to discourage harbouring them in this state : passed 13th April, 1782 ; recorded in law book No. I. page 518 ; obsolete.
965. An act to revive and continue an act, entitled " an act for opening and keeping in repair the public roads and highways in this province," passed 13th April, 1782 ; recorded in law book No. I. page 522 ; supplied 29th September, 1787.
967. An act to alter and repeal a part of the act, entitled, " an act for emitting the sum of five hundred thousand pounds in bills of credit, for the support of the army, and for establishing a fund for the redemption thereof, and for other purposes therein mentioned," passed 13th April, 1782 ; recorded in law book No. I. page 523 ; obsolete.
972. An act to enable the supreme executive council to negotiate such loans, as may be necessary to procure a sufficient sum of money for the defence of the frontiers of this state, and the support of civil government : passed 15th April 1782 : recorded in law book No. I. page 534 ; repealed 21st September, 1782.
973. A supplement to an act entitled, " an act for guarding and defending the navigation in the bay and river Delaware, and for other purposes therein mentioned," passed 15th April, 1782 ; recorded in law book No. I. page 534 ; repealed 17th September, 1783.
974. An act to empower Elizabeth Allen, widow of James Allen, esquire, deceased, during the minority of her infant son James, to grant and convey sundry lots of land in the town of Northampton, in the county of Northampton, in this state, to such persons as have built, or shall agree to build, houses on the same : passed 30th August, 1782 ; recorded in law book No. II. page 1 ; private act ; obsolete.
975. An act for the more effectual suppression of all intercourse and commerce with the enemies of the United States of America : passed 20th September, 1782 ; recorded in law book No. II. page 3 ; expired.
977. An act to extend the powers of the comptroller-general of this commonwealth : passed 20th September, 1782 ; recorded in law book No. II. page 9 ; repealed and supplied.

A. D.

1782. CHAP. 978. An act for securing, within this commonwealth, to the subjects of his most christian majesty, the rights and privileges stipulated in their behalf by the eleventh article of the treaty of amity and commerce, concluded between his most christian majesty and the United States of America : passed 20th September, 1782 ; recorded in law book No. II. page 11 ; obsolete.
983. An act for procuring an estimate of the damages sustained by the inhabitants of Pennsylvania, from the troops and adherents of the king of Great-Britain, during the present war : passed 21st September, 1782 ; recorded in law book No. II. page 24 ; obsolete.
984. An act to repeal the act, entitled " an act to enable the supreme executive council to negotiate such loans, as may be necessary to procure a sufficient sum of money for the defence of the frontiers of this state, and the support of civil government, and for other purposes therein mentioned," passed 21st September, 1782 ; recorded in law book No. II. page 26 ; obsolete.
985. An act for the relief of John Sensenigh, an insolvent debtor, confined in the gaol of Lancaster county : passed 18th November, 1782 ; recorded in law book No. II. page 27 ; private act ; obsolete.
986. An act to vest the estate of John Spering, late of Easton, in the county of Northampton, cordwainer, in his four children : passed 22d November, 1782 ; recorded in law book No. II. page 28 ; private act ; obsolete.
987. An act for raising an impost on goods, wares and merchandize, imported or brought into this state by land : passed 22d November, 1782 ; recorded in law book No. II. page 29 ; repealed 17th September, 1783.
988. An act to stay and prevent suits being brought against sundry officers, deputies or agents, heretofore employed in the service of this state, and of the United States : passed 29th November, 1782 ; recorded in law book No. II. page 31 ; expired.
990. An act for vesting several houses and lots of land in the city of Philadelphia, the residuary real estate of John Nicholas, deceased, in trustees, to sell the same, and to make distribution of the money arising by these sales among the residuary devisees in the said John Nicholas his last will and testament named, and their legal representatives, in proportion to the quantity of interest each of them has in the lands and tenements to be sold, and for ascertaining and securing to each minor his or her share of that money : passed 3d December, 1782 ; recorded in law book No. II. page 35 ; private act ; obsolete.
1783. 991. An act to provide for the payment of the discharged sick and wounded soldiers belonging to this state, agreeable to the recommendation of congress of the twenty-third day of April, one thousand seven hundred and eighty-two : passed 31st January, 1783 ; recorded in law book No. II. page 38 ; repealed 22d September, 1785.
992. An act to indemnify and save harmless, the persons appointed to superintend the making and perfecting the bills of credit, dated the twentieth day of April, one thousand seven hundred and eighty-one, from the penalties they may have incurred by not perfecting and finishing the whole of the said bills, and to make the said bills of credit, of April, one thousand seven hundred and eighty-one, a legal tender for the taxes of ninety-three thousand six hundred and forty pounds and ten shillings per annum, laid by an act of assembly of the nineteenth day of December, one thousand seven hundred and eighty, entitled " a supplement to an act, entitled, " an act for funding and redeeming the bills of credit of the United States of America, and for providing means to bring the present war to an happy conclusion." passed 31st January, 1783 ; recorded in law book No. II. obsolete.

A. D.

1783. CHAP. 993. An act for the attainder of Harry Gordon, unless he surrender himself, and for other purposes therein mentioned : passed 31st January, 1783 ; recorded in law book No. II. page 42 ; private act ; obsolete.
994. A supplement to the act, entitled " an act for the support of government, and administration of justice," passed 25th February, 1783 ; recorded in law book No. II. page 44 ; repealed 17th September, 1785.
995. An act to establish and confirm the estate of John Morris, of the township of Easton, in the county of Chester, in fifty acres of land in West Whiteland township, in the said county : passed 25th February, 1783 ; recorded in law book No. II. page 45 ; private act ; obsolete.
997. An act for extending the provision made in the seventh section of the act, entitled " an act for the repeal of so much of the laws of this commonwealth, as make the continental bills of credit, and the bills emitted by the resolves or acts of assemblies of the said commonwealth, a legal tender, and for other purposes therein mentioned," passed 12th March, 1783 ; recorded in law book No. II. page 49 ; obsolete.
998. An act to discontinue part of a road in New-Britain township, in the county of Bucks : passed 12th March, 1783 ; recorded in law book No. II. page 51 ; private act ; obsolete.
1000. An act to vest the present trustee of the loan-office with certain powers and authorities : passed 13th March, 1783 ; recorded in law book No. II. page 56 ; supplied 1st April, 1790.
1001. An act for the relief of John Gosline, otherwise called John Gosling : passed 13th March, 1783 ; recorded in law book No. II. page 56 ; private act ; obsolete.
1002. An act to prevent and stay suits from being brought against the inhabitants of Wyoming, during the time therein mentioned : passed 13th March, 1783 ; recorded in law book No. II. page 57 ; repealed 9th September, 1783.
1003. An act to prevent and discourage the desertion of sailors from the fleets of his most christian majesty : passed 17th March, 1783 ; recorded in law book No. II. page 58 ; obsolete.
1004. An act for the relief of Joseph Judson, James Robinson, and James Lees, insolvent debtors confined in the old gaol of the city and county of Philadelphia : passed 17th March, 1783 ; recorded in law book No. II. page 60 ; private act ; obsolete.
1006. A further supplement to the act, entitled " an act to prevent the exportation of bread and flour not merchantable, and for repealing, at a certain time, all laws heretofore made for that purpose," passed 19th March, 1783 ; recorded in law book No. II. page 68 ; expired.
1007. An act for raising and collecting of money on the specified articles therein mentioned, for the support of government, and for other purposes therein mentioned : passed 20th March, 1783 ; recorded in law book No. II. page 70 ; repealed.
1008. An act to repeal part of the act, entitled " an act for the more effectual suppression of all intercourse and commerce with the enemies of the United States of America," and for other purposes therein contained : passed 20th March, 1783 ; recorded in law book No. II. page 71 ; expired.
1009. An act for the settlement of the public accounts of the United States of America ; passed 20th March, 1783 ; recorded in law book No. II. page 73 ; expired.
1019. An act for providing the quota of federal supplies for the year one thousand seven hundred eighty and three, and for the relief of the citizens of this state, who have become creditors of the United States of America, by loans of money, or other modes of furnishing public supplies : passed 21st March, 1783 ; recorded in law book No. II. page 75 ; obsolete.

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1783. CHAP. 1011. A further supplement to the act, entitled "an act for the regulation of the militia of the commonwealth of Pennsylvania," and to repeal the act, entitled "a supplement to the act for the regulation of the militia of the commonwealth of Pennsylvania," passed 21st March, 1783; recorded in law book No. II. page 84; repealed.
1013. An act to appropriate certain monies arising from the excise, for the payment of the annual interest due on unalienated certificates therein mentioned: passed 21st March, 1783; recorded in law book No. II. page 93; expired.
1017. An act to encourage the speedy apprehending and bringing to justice divers robbers, burglars, and felons: passed 8th September, 1783; recorded in law book No. II. page 103; expired.
1019. An act for the repeal of an act, entitled "an act to prevent and stay suits from being brought against the inhabitants of Wyoming, during the time therein mentioned," and for other purposes therein mentioned: passed 9th September, 1783; recorded in law book No. II. page 117: repealed.
1022. An act to dissolve the marriage of Charles Rubey, of the town of Bedford, cordwainer, and Jane, his wife: passed 20th September, 1783; recorded in law book No. II. pa. 147; private act; obsolete.
1023. A supplement to an act, entitled "an act appointing Wardens for the port of Philadelphia," and to an act, entitled "an act to prevent infectious diseases being brought into this province," passed 20th September, 1783; recorded in law book No. II. page 148; repealed.
1025. A supplement to the act, entitled "an act to appropriate certain monies arising from the excise, for the payment of the annual interest due on unalienated certificates therein mentioned," passed the twenty-first day of March last: passed 20th September, 1783; recorded in law book No. II. page 154; expired.
1026. An act for the relief of William Brown, an insolvent debtor, confined in the gaol of the city and county of Philadelphia for debt: passed 20th September, 1783; recorded in law No. II. page 156; private act.
1027. An additional supplement to an act, entitled "an act for the regulation of the militia of the commonwealth of Pennsylvania," passed 22d September, 1783; recorded in law book No. II. page 160; repealed.
1028. An act for levying a duty on certain enumerated articles, and an impost of five *per centum*, *ad valorem*, on all other goods, wares and merchandise, imported into this state, and a tax upon real and personal property, for the discharge of the debts of the United States of America, agreeable to acts of congress therein recited, and for other purposes therein mentioned: passed 23d September, 1783; recorded in law book No. II. page 161; obsolete.
1031. An act for the relief of Francis Murray, John Duguid, Robert Patton, William Crawford, Andrew Dover, Thomas Jenny, and Andrew Robinson, late officers of the Pennsylvania line, in the service of the United states: passed 23d September, 1783; recorded in law book No. II. page 171; private act; obsolete.
1032. An act to dissolve the marriage of Peter Summers, and Catharine, his wife: passed 23d September, 1783; recorded in law book No. II. page 173; private act; obsolete.
1033. An act to confirm the title of Joshua Russel to certain lands therein mentioned: passed 23d September, 1783; recorded in law book No. II. page 174; private act; obsolete.
1034. An act to grant the right of pre-emption to an island, known by the name of Montour's island, in the Ohio river, in Brigadier General William Irvine: passed 24th September, 1783; recorded in law book, No. II; obsolete.
1035. An act for the affording indemnity to Thomas Hutchins, esquire, formerly a captain and engineer in his Britannic majesty's service, and now geographer to the United States: passed 24th September, 1783; recorded in law book No. II. page 177; private act; obsolete.

A. D

1783. CHAP. 1036. An act for the relief of Joseph Judson, Shem Thompson, and Lawrence Powell, insolvent debtors, confined in the gaol of the city and county of Philadelphia: passed 24th September, 1783; recorded in law book No. II. page 178; private act; obsolete.
1037. An act for confirming the estate of George Roth in certain lands, the title deeds being lost: passed 24th September, 1783; recorded in law book No. II. page 180; private act; obsolete.
1038. An act to establish and confirm the estate of Persifor Frazer, esquire, in a tract of land and tenements, in this state: passed 24th September, 1783; recorded in law book No. II. page 183; private act; obsolete.
1039. An act for the relief of John Klein, an insolvent debtor, confined in the gaol of Lancaster county: passed 24th September, 1783; recorded in law book No. II. page 184; private act; obsolete.
1040. A supplement to an act, entitled "an act for an impost on goods, wares and merchandise, imported into this state," passed 25th September, 1783; recorded in law book No. II. page 185; obsolete.
1041. A supplement to an act, entitled "an act for providing the quota of federal supplies for the year one thousand seven hundred and eighty-three, and for the relief of the citizens of this state, who have become creditors of the United States of America, by loans of money, or other modes of furnishing public supplies," passed March twenty-first, one thousand seven hundred and eighty-three; passed 25th September, 1783; recorded in law book No. II. page 189; obsolete.
1044. An act for the relief of Andrew Trumbower, an insolvent debtor, confined in the gaol of Newtown, in the county of Bucks: passed 25th September, 1783; recorded in law book No. II. page 193; private act; obsolete.
1047. An act to repeal part of the act, entitled "an act for an impost, on goods, wares and merchandise, imported into this state," passed 18th November, 1783; recorded in law book No. II. page 205; obsolete.
1048. An act for the better securing the city of Philadelphia, and its liberties, from danger of gunpowder: passed 6th December, 1783; recorded in law book No. II. page 206; repealed 28th March, 1787.
1049. An act to complete the title of Abraham Comron, and Rebecca English, his sister, to a house and lot in Mulberry ward, in the city of Philadelphia: passed 6th December, 1783; recorded in law book No. II. page 211; private act; obsolete.
1050. An act for the more effectually securing and recovering, for the uses of the commonwealth, the monies due for excise and militia fines, and for other purposes therein mentioned: passed 9th December, 1783; recorded in law book No. II. page 213; repealed.
1053. An act to confirm the title to a house and lot of land on Mulberry-street, in the city of Philadelphia, late the estate of John Nicholas, for which some of the original deeds are lost, and to enable the trustees of that estate to convey the same: passed 24th January, 1783; recorded in law book No. II. page 226; private act; obsolete.
1054. An act to vacate and abolish part of two roads in Warminster township, in the county of Bucks: passed 5th February, 1784; recorded in law book No. II. page 229; obsolete.
1056. A supplement to the act, entitled "an act to encourage the speedy apprehending and bringing to justice divers robbers, burglars and felons," passed 9th February, 1784; recorded in law book No. II. page 231; expired.
1058. An act to establish and confirm the title of Richard Gardiner in a certain lot, and tenement thereon erected, and situated in the city of Philadelphia: passed 11th March, 1784; recorded in law book No. II. page 234; private act; obsolete.

A. D.

- 1784, CHAP. 1059. An act to establish and confirm the estate of Henry Gurney, in certain messuages, tenements, and lots of land, situated and being within the city and county of Philadelphia: passed 11th March, 1784; recorded in law book No. II. page 235; private act; obsolete.
1064. An act for raising, by way of lottery, the sum of forty-two thousand dollars, for improving the public roads, leading from the city of Philadelphia to the western parts of this state, and towards the improving the navigation of the river Schuylkill; passed 15th March, 1784; recorded in law book No. II. page 252; obsolete.
1065. An act for raising a further impost or duty on all goods, wares or merchandise, imported into this state: passed 15th March, 1784; recorded in law book No. II. page 263; obsolete.
1066. An act to dissolve the marriage of John Alexander, and Margaret, his wife; passed 15th March, 1784; recorded in law book No. II. page 266; private act; obsolete.
1068. An act for the encouragement and promotion of learning, by vesting a right to the copies of printed books in the authors or purchasers of such copies, during the time therein mentioned: passed 15th March, 1784; recorded in law book No. II. page 272; obsolete.
1069. A supplement to an act, entitled "an act for erecting part of the county of Bedford into a separate county," passed 22d March, 1784; recorded in law book No. II. page 274; repealed 13th September, 1785.
1071. An act to dissolve the marriage of Alexander Kidd, and Edith Kidd, his wife; passed 22d March, 1784; recorded in law book No. II. page 278; private act; obsolete.
1072. An act to dissolve the marriage of Leonard Eckstine, of the county of Westmoreland, and Mary, his wife: passed 22d March, 1784; recorded in law book No. II. pa. 279; private act; obsolete.
1073. An act to dissolve the marriage of Robert Steward, of the city of Philadelphia, mariner, and Catharine his wife: passed 22d March, 1784; recorded in law book No. II. page 281; private act; obsolete.
1075. An act to remedy the inconveniences of holding the annual elections in the second district of Bedford county, and the third and fourth districts in the county of Westmoreland, at the places heretofore appointed by the laws of this commonwealth: passed 27th March, 1784; recorded in law book No. II. page 286; supplied.
1076. An act for destroying squirrels in the counties of Westmoreland, Washington and Fayette: passed 27th March, 1784; recorded in law book No. II. page 288; repealed and supplied.
1081. An act to regulate the fisheries in the rivers Delaware and Lehigh, and for the preservation of the fish in the said rivers: passed 30th of March, 1784; recorded in law book No. II. page 300; repealed and supplied.
1082. An act to remedy the defects of the several acts of assembly heretofore made for regulating the elections of the Justices of the peace throughout this state, and to establish a permanent mode of holding such elections; and to authorise the Justices of the peace of the city of Philadelphia to hold the courts of record of the said city: passed 31st March, 1784; recorded in law book No. II. page 305; obsolete.
1084. An act to empower the supreme executive council to sell the barracks, in the Northern-Liberties of the city of Philadelphia: passed 1st April, 1784; recorded in law book No. II. page 317; obsolete.
1085. An act for the relief of John Long, John M'Fadden, Daniel Drais, Mary Currie, and Elizabeth Carnaghan, insolvent debtors, confined in the gaol of the city and county of Philadelphia: passed 1st April, 1784; recorded in law book No. II. page 319; private act; obsolete.

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1784. CHAP. 1086. An act for the further regulation of the port of Philadelphia, and enlarging the power of the wardens thereof; passed 1st April, 1784; recorded in law book No. II. page 321; repealed 4th October, 1788.
1087. An act for the relief of Henry Eberle, an insolvent debtor, confined in the gaol of Lancaster county; passed 1st April, 1784; recorded in law book No. II. page 331; private act; obsolete.
109. An act to enable the comptroller-general to issue certificates for the balances due on the accounts of the late ranging companies, raised for the defence of the frontiers, and other accounts due to the citizens of this state: passed 1st April, 1784; recorded in law book No. II. page 334; obsolete.
1090. A further supplement to the laws respecting the Wardens of the city of Philadelphia: passed 1st April, 1784; recorded in law book No. II. page 335; repealed.
1092. An act to vest in Isaac Austin a certain messuage, wharf, ferry and ferry-landing, situated on the north side of Mulberry-street, at the easternmost extremity thereof, in the city of Philadelphia, late the property of William Austin, attainted of high treason: passed 6th August, 1784; recorded in law book No. II. page 346; repealed 18th February, 1785.
1093. An act for furnishing, from the militia of Pennsylvania, the quota of troops required by Congress for the protection of the north-western frontiers, and for other purposes: passed 11th August, 1784; recorded in law book No. II. page 351; obsolete.
1094. An act to vacate and abolish part of a road, leading from the line of the York-town lands to the Newberry road, in Manchester township, York county: passed 1st September, 1784; recorded in law book No. II. page 353; private act; obsolete.
1100. An act for the more speedy restoring the possession of certain messuages, lands and tenements, in Northumberland county, to the persons who lately held the same: passed 15th September, 1784; recorded in law book No. II. page 348; expired.
1102. An act to establish and confirm the title of John Shearer in a certain tract or piece of land, situated in Whitpain township, in the county of Philadelphia: passed 15th September, 1784; recorded in law book No. II. page 349; private act; obsolete.
- ✓ 1103. An act giving further time to the inhabitants of Westmoreland, Washington and Fayette counties, to record their certificates obtained from the state of Virginia, when under the jurisdiction of the same: passed 23d September, 1784; recorded in law book No. II. page 352; obsolete.
1104. A supplement to an act, entitled "an act for the further regulation of the port of Philadelphia, and for enlarging the power of the wardens thereof," passed 23d September, 1784; recorded in law book No. II. page 356; repealed 4th October, 1788.
1105. A supplement to an act, entitled "an act for the more easy and speedy recovery of small debts," passed 23d September, 1784; recorded in law book No. II. page 354; repealed 19th April, 1794.
1106. A supplement to the act, entitled "an act for raising, by way of lottery, the sum of forty-two thousand dollars, for improving the public roads, leading from the city of Philadelphia to the western parts of this state, and towards the improving the navigation of the river Schuylkill," passed 30th November, 1784; recorded in law book No. II. page 375; obsolete.
1107. An act to carry into immediate effect the resolutions of the United States, in congress assembled, for adjusting the claims of individuals of this commonwealth, against the said United States: passed 1st December, 1784; recorded in law book No. II. page 377; repealed 30th March, 1785.
1108. An act to vest congress with certain powers, for the protection of commerce: passed 15th December, 1784; recorded in law book No. II. page 379; obsolete.

A. D.

1784. CHAP. 1110. An act for the relief of insolvent debtors, now confined in the several gaols of this commonwealth: passed 20th December, 1784; recorded in law book No. II. page 382; obsolete.
1112. An act for directing the mode of recovering debts contracted before the first day of January, in the year of our Lord one thousand seven hundred and seventy-seven: passed 23d December, 1784; recorded in law book No. II. page 387; obsolete.
1785. 1114. An act to grant to Arthur Donaldson, his executors, administrators and assigns, the exclusive right of making, and using in the river Delaware, a machine, called Hippopotamos, by him invented, for the cleansing of docks, and raising sand, gravel, dirt, and other things, from the bed of the river: passed 7th February, 1785; recorded in law book No. II. page 398; private act; expired.
1115. An act to enable the courts of quarter sessions of the several counties of this commonwealth to vacate roads and highways, in proper cases: passed 8th February, 1785; recorded in law book No. II. page 400; repealed.
1116. An act for erecting South Dock ward, being part of Dock ward, in the city of Philadelphia, into a new ward: passed 9th February, 1785; recorded in law book No. II. page 404; obsolete.
1118. A supplement to an act, entitled "an act for regulating, pitching, paving and cleansing the highways, streets, lanes and alleys, and for regulating, making and amending the water-courses and common-sewers, within the inhabited and settled parts of the city of Philadelphia, for raising of money to defray the expenses thereof, and for other purposes therein mentioned," passed 9th February, 1785; recorded in law book No. II. page 408; obsolete.
1119. An act to authorize and direct the immediate payment of the sum of fifteen thousand pounds, sterling, to the devisees and legatees of Thomas Penn and Richard Penn, and to the widow and relict of the said Thomas Penn, being the first yearly payment directed to be paid to them by an act of Assembly of this commonwealth, entitled "an act for vesting the estate of the late proprietaries of Pennsylvania in the commonwealth," passed 10th February, 1785; recorded in law book No. II. page 409; obsolete.
1120. An act to dissolve the marriage of Nathaniel Irwin and Martha his wife: passed 17th February, 1785; recorded in law book No. II. page 412; private act; obsolete.
1122. An act to give the benefit of trial by jury to the public officers of this state, and to other persons, who shall be proceeded against in a summary manner by the comptroller-general of this state: passed 18th February, 1785; recorded in law book No. II. page 413; repealed, 30th March, 1811.
1123. An act to repeal an act of assembly, entitled "an act to vest in Isaac Austin a certain messuage, wharf, ferry and ferry-landing, situate on the north side of Mulberry-street, at the easternmost extremity thereof, in the city of Philadelphia, late the property of William Austin attainted of high treason;" and to restore the possession of the real estate, therein mentioned, to George Adam Baker: passed 18th February, 1785; recorded in law book No. II. page 390; private act; obsolete.
1127. An act for the better regulation of juries: passed 19th March, 1785; recorded in law book No. II. page 458; repealed 29th of March, 1805.
1129. A further supplement to the act, entitled "an act for raising county rates and levies," passed 25th March, 1785; recorded in law book No. II. page 471; repealed.
1131. An act to ascertain, fix and establish permanent salaries for the judges of the supreme court: passed 25th March, 1785; recorded in law book No. II. page 479; obsolete.

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1785. CHAP. 1132. An act for the relief of the Pennsylvania volunteers, and eighteen months men: passed 25th March, 1785; recorded in law book No. II. page 470; obsolete.
- ✓ 1133. An act granting to James Rumsey an exclusive right, for a certain term of years, to navigate and build boats calculated to work with greater ease and facility against rapid rivers: passed 25th March, 1785; recorded in law book No. II. page 480; private act; expired.
1137. An act for the relief of insolvent debtors now confined in the several gaols of this commonwealth: passed 30th March, 1785; recorded in law book No. II. page 489; obsolete.
1138. An act for the relief of such persons as have debts due to them from the estates of persons attainted of treason, and confiscated in the late war, and for other purposes therein mentioned: passed 30th March, 1785; recorded in law book No. II. page 488; obsolete.
1139. An act to authorize the holding of prisoners arrested within the county of Montgomery, for debts and offences. in the gaol and work-house of the county of Philadelphia, until a proper prison shall be erected within the county of Montgomery: passed 30th March, 1785; recorded in law book No. II. page 491; expired.
1140. An act to repeal an act of assembly, entitled "an act to carry into immediate effect the resolutions of the United States in congress assembled, for adjusting the claims of individuals of this commonwealth against the said United States: passed 30th March, 1785; recorded in law book No. II. page 487; obsolete.
1141. An act to suspend an act of general assembly of this commonwealth, entitled "a supplement to an act, entitled "an act to enable William Clingan, Thomas Bull, John Kinkead, Roger Kirk, John Sellers, John Wilson, and Joseph Davis, to build a new courthouse and prison in the county of Chester, and sell the old courthouse and prison in the borough of Chester," passed 30th March, 1785; recorded in law book No. II. page 492; repealed 18th March, 1786.
1142. An act to dissolve the marriage of Henry Willis with Mary his wife: passed 30th March, 1785; recorded in law book No. II. page 490; private act; obsolete.
1143. An act to authorize and enable the supreme executive council to appoint commissioners, to join with the commissioners appointed or to be appointed on the part of the state of New-York, to ascertain the northern boundary of this state, from the river Delaware, westward, to the north-west corner of Pennsylvania: passed 31st March, 1785; recorded in law book No. II. page 525; obsolete.
1145. An act to enable the agent or agents of his most christian majesty to sue for and recover, in a more speedy way, any debt or demand that may be due to them in this state: passed 2d April, 1785; recorded in law book No. II. page 494; obsolete.
1146. A supplement to the acts for raising an impost on goods, wares and merchandize imported, for securing more effectually the revenues arising from the same: passed 2d April, 1785; recorded in law book No. II. page 496; obsolete.
1147. An act to declare and establish the right of the executive council of this commonwealth to appoint all officers, civil and military, except in the cases reserved by the constitution to the general assembly, and to the people; and to repeal the laws, whereby certain officers have been appointed contrary thereto, and to secure the independency of the comptroller-general, by a commission for seven years, and a permanent salary, upon condition of his good behaviour only: passed 4th April, 1785; recorded in law book No. II. page 512; obsolete.
1149. An act to enlarge the summary jurisdiction of the Justices of the peace, in actions of debts or demand, to sums not exceeding ten pounds, and to repeal an act, entitled "a supplement to an act for the more easy and speedy recovery of small debts," passed 5th April, 1785; recorded in law book No. II. page 517; repealed.

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- 1785. CHAP. 1150.** An act to repeal and alter such parts of the excise laws, and other tax laws of this commonwealth, as empower the collectors of these taxes to break open dwelling-houses, in order to make seizures and distresses, before oath or affirmation be first made, affording sufficient foundation for so doing; the acts of assembly which authorize the supreme executive council of this state to inflict fines in a summary manner, upon commissioners of counties; the acts of assembly made for discouraging desertion, so as to allow trial by jury to persons charged with the harbouring or aiding deserters from the armies or ships of the United States of America or of his most christian majesty; and to restore the like privilege to persons damaged by ships running foul of each other: passed 5th April, 1785; recorded in law book No. II. obsolete.
1151. An act to empower the supreme executive council to draw on the treasurer of this state, for the sum of five hundred pounds, in favour of Thomas Paine, esquire: passed 5th April, 1785; recorded in law book No. II. page 519; private act; obsolete.
1155. An act for the relief of divers officers, late of the state navy: passed 8th of April, 1785; recorded in law book No. II. page 541; obsolete.
1160. An act for furnishing the quota of troops required by congress for the protection of the north-western frontiers, and for other purposes: passed 6th September, 1785; recorded in law book No. II. page 556; obsolete.
1162. An act to enable the honourable Edward Shippen esquire, and John Swift, esquire, the only surviving trustees now resident within this state, to grant, bargain, sell, convey and assure a certain messuage and lot of ground, in the city of Philadelphia, commonly called the Masons-Lodge and to apply the monies arising from such sale to the uses therein mentioned: passed 6th September, 1785; recorded in law book No. II. page 552; private act; obsolete.
1163. A supplement to the act, entitled "An act for erecting and opening a loan-office, for the sum of fifty thousand pounds, and for other purposes therein mentioned," passed 10th September, 1785; recorded in law book No. III. page 2; obsolete.
1166. An act for the immediate sale of the lot of ground, in the city of Philadelphia, whereon the old gaol and work-house lately stood: passed 13th September, 1785; recorded in law book No. III. page 3; obsolete.
1167. An act to repeal an act of assembly, entitled "an act to incorporate the subscribers to the bank of North-America:" also one other act, entitled "an act for preventing and punishing the counterfeiting of the common seal, bank bills and bank notes of the president, directors and company of the bank of North-America," and for other purposes therein mentioned: passed 13th of September, 1785; recorded in law book No. III. page 21; obsolete.
1168. An act for declaring the acts of assembly, which gives the authority of justice of the peace to the chief burgess of the borough of Lancaster, and to the burgesses of the borough of Carlisle and Reading, to be so far contrary to the constitution; and to repeal the same acts, so far as they contradict the constitution: passed 13th September, 1785; recorded in law book No. III. page 23; obsolete.
1172. An act for the regulation of bankruptcy: passed 16th of September, 1785; recorded in law book No. III. page 24; obsolete.
1173. An act to declare and establish the constitutional rights of the president and council of this state to draw for the public monies in the hands of the treasurer of the commonwealth, and to repeal divers acts of assembly, so far as they are repugnant to the same: passed 17th September, 1785; recorded in law book No. III. page 36; obsolete.
1174. An act for the support of government: passed 17th September, 1785; recorded in law book No. III. page 37; obsolete.

A. D.

1785. CHAP. 1175. An act to enable commissioners therein named to settle the accounts of the managers of a lottery, set up and drawn for the purpose of building Newark academy, and a German Lutheran church in Whitpain township, Philadelphia county, and repairing Norriton meeting-house, and every other person concerned therein, and for other purposes therein mentioned: passed 17th September, 1785; recorded in law book No. III. page 39; expired.
1177. An act to encourage and protect the manufactures of this state, by laying additional duties on the importation of certain manufactures, which interfere with them: passed 20th September, 1785; recorded in law book No. III. page 44; obsolete.
1179. An act authorizing the supreme executive council to draw an order on the treasurer of this state for the sum of sixty-seven pounds and three-pence, in favour of David Meade, esquire: passed 22d September, 1785; recorded in law book No. III. page 53; private act; obsolete.
1180. An act to empower Deborah Irvine to receive the interest upon her husband James Irvine's depreciation certificate, during his absence: passed 22d September, 1785; recorded in law book No. III. page 54; private act; obsolete.
1181. An act to settle and adjust the accounts of the officers of this state, in the service of the United States, who, were deranged by the resolution of congress, passed the fourth day of June, one thousand seven hundred and seventy-eight: passed 22d September, 1785; recorded in law book No. III. page 57; obsolete.
1183. An act for the relief of officers, soldiers and seamen, who, in the course of the late war, have been wounded or otherwise disabled in the service of this State, or of the United States: passed 22d September, 1785; recorded in law book No. III. page 48; repealed.
1187. A supplement to the act, entitled; "an act to encourage and protect the manufactures of this state, by laying additional duties on the importation of certain manufactures, which interfere with them: passed 24th December, 1785; recorded in law book No. III. page 68; obsolete.
1188. An act for quieting the disturbances at Wyoming, for pardoning certain offenders, and for other purposes therein mentioned: passed 24th December, 1785; recorded in law book No. III. page 69; obsolete.
1786. 1189. A supplement to the act, entitled "an act for raising the sum of forty-two thousand dollars, for improving the public roads leading from the city of Philadelphia to the western parts of this state, and towards the improving the navigation of the river Schuylkill," passed 27th February, 1786; recorded in law book No. III. page 70; obsolete.
1191. An act for the further relief of the public creditors, who are citizens of this state, by receiving on loan certain debts of the United States of America, and for funding the same, and for paying the annual interest of such loans, and the interest of certain debts of this state, every six months: passed 1st of March, 1786; recorded in law book No. III. page 74; repealed.
1193. An act to ascertain the number of taxable inhabitants within the city of Philadelphia, and within each of the counties of this commonwealth, and for other purposes therein mentioned: passed 3d March, 1786; recorded in law book No. III. page 80; obsolete.
1194. An act to alter and amend an act, entitled "an act to remedy the defects of the several acts of assembly heretofore made for regulating the elections of justices of the peace throughout this state, and to establish a permanent mode of holding such elections; and to authorize the justices of the peace of the city of Philadelphia to hold the courts of record of the said city, and to make further provision for the due election and return of justices of the peace elect," passed 4th March, 1786; recorded in law book No. III. page 81; obsolete.

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1786. CHAP. 1195. An act for securing to this commonwealth the fidelity and allegiance of the inhabitants thereof, and for admitting certain persons to the rights of citizenship; passed 4th of March 1786; recorded in law book No. III. page 84; repealed.
1198. An act for complying with the requisition of the United States in congress assembled, for the services of the year one thousand seven hundred and eighty-five, and for paying one year's interest on the foreign and domestic debts: passed 8th March, 1786; recorded in law book No. III. page 110; obsolete.
1199. An act for the relief of such officers, late of the state navy, as were made prisoners of war previous to the derangement in the year one thousand seven hundred and seventy-eight, and were afterwards honourably discharged, and of the widows and children of those officers, who died during their captivity: passed 8th March, 1786; recorded in law book No. III. page 90; obsolete.
1201. An act to provide for the payment of the principal and interest of such of the bills emitted pursuant to a resolution of congress of the eighteenth day of March, one thousand seven hundred and eighty; and an act of the legislature of this state of June the first, one thousand seven hundred and eighty, as shall remain unredeemed on the thirty first day of December, one thousand seven hundred and eighty-six: passed 17th March, 1786; recorded in law book No. III. page 91; obsolete.
1203. An act for repealing so much of a law, passed in December, one thousand seven hundred and eighty, for raising the sum of ninety-three thousand six hundred and forty pounds ten shillings, annually, for six years, as relates to the payments of the last four annual taxes therein directed to be laid: passed 18th of March, 1786; recorded in law book No. III. page 93; obsolete.
1204. An act to repeal an act, entitled "an act to suspend an act of general assembly of this commonwealth, entitled "a supplement to an act, entitled "an act to enable William Clingan, Thomas Bull, John Kinkhead, Roger Kirk, John Sellers, John Wilson, and Joseph Davis, to build a new court-house and prison in the county of Chester, and sell the old court-house and prison, in the borough of Chester:" passed 18th March, 1786; recorded in law book No. III. page 93; obsolete.
1207. An act to enforce the due collection and payment of taxes within this commonwealth: passed 24th March, 1786; recorded in law book No. III. page 96; repealed.
1208. An act to provide for discharging the arrears of interest due upon the depreciation certificates granted by this state, upon which interest was heretofore payable: passed 25th March, 1786; recorded in law book No. III. page 98; obsolete.
1209. An act to establish and confirm the title of the assigns of Nathaniel Taylor, in a certain messuage and tract of land, in Allen township, in the county of Northampton: passed 27th March, 1786; recorded in law book No. III. page 100; private act; obsolete.
1211. A supplement to the act, entitled "an act to regulate the fisheries in the rivers Delaware and Lehigh, and for the preservation of the fish in the said rivers," passed 7th April, 1786; recorded in law book No. III. page 102; repealed by act of 8th of February, 1804.
1212. An act for dividing Mulberry-ward, in the city of Philadelphia, into two separate wards; passed 7th April, 1786; recorded in law book No. III. page 102; obsolete.
1215. A supplement to the act, entitled "an act for levying a duty on certain enumerated articles, and an impost of five *per centum ad valorem* on all other goods, wares and merchandise, imported into this state, and a tax upon real and personal property, for the discharge of the debts of the United States of America, agreeable to acts of congress, therein recited, and for other purposes therein mentioned:" passed 8th April, 1786; recorded in law book No. III. page 106; obsolete.

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1786. CHAP. 1216. An act to alter and amend an act, entitled "an act to encourage and protect the manufactures of this state, by laying additional duties on the importation of certain manufactures which interfere with them:" passed 8th April, 1786; recorded in law book No. III. page 108; obsolete.
1217. An act for lending the sum of three hundred pounds to Whitehead Humpireys, of the city of Philadelphia, for the purpose of manufacturing bar iron into steel: passed 8th April, 1786; recorded in law book No. III. page 109; obsolete.
1219. An act to extend the benefit of an act, entitled "an act to give the benefit of trial by jury to the public officers of this state, and to other persons, who shall be proceeded against in a summary manner by the comptroller-general of this state," to such person or persons, whose accounts were settled before the publication of the same act: passed 26th of August, 1786; recorded in law book No. III. page 121; expired.
1226. An act to relieve the owners of unimproved lands from the inconveniences they are subjected to by the present mode of enforcing the payment of taxes assessed thereon: passed 11th September, 1786; recorded in law book No. III. page 138; repealed and supplied.
1230. An act for amending the penal laws of this state: passed 15th September, 1786; recorded in law book No. III. page 112; repealed.
1232. An act to empower and direct Ann McFarren, John Agnew and William McClean, administrators of all and singular the goods and chattels, rights and credits, which were of Amos McGinley, deceased, to convey certain lands in Hamilton's Bann and Cumberland townships, in York county, to sundry persons, for whom the said Amos McGinley was a trustee, and to vest the same in the grantees: passed 21st September, 1786; recorded in law book No. III. page 134; private act; obsolete.
1236. An act to empower the Sheriff of the county of Chester to remove the prisoners from the old gaol, in the town of Chester, to the new gaol, in Goshen township, in said county, and to indemnify him for the same: passed 25th September, 1786; recorded in law book No. III. page 132; obsolete.
1237. An act for the prevention of vice and immorality, and of unlawful gaming, and to rest rain disorderly sports and dissipation: passed 25th September, 1786; recorded in law book No. III. page 125; repealed.
1238. An act for the relief of George Schlosser: passed 21st September, 1786; recorded in law book No. III. page 124; private act; obsolete.
1240. An act for authorizing and directing the comptroller-general to issue a certificate in favour of William Tharpe, for a sum of money due to him from this commonwealth, in consequence of an agreement of the honourable the supreme executive council: passed 25th September, 1786; recorded in law book No. III. page 111; private act; obsolete.
1241. An act to authorize and empower Frederick Smyth, of the city of Philadelphia, esquire, and Margaret his wife, late Margaret Oswald, and the honourable John Penn and Edward Shippen, esquires, and doctor Thomas Parke, to sell and convey a messuage and lot of ground, therein described, upon the terms and conditions therein mentioned: passed 25th September, 1786; recorded in law book No. III. page 149; private act; obsolete.
1242. An act to appoint a representation for the city of Philadelphia, and the several counties in this commonwealth, in proportion to the number of taxable inhabitants in each, for the ensuing seven years: passed 27th Sept'r, 1786; recorded in law book, No. III. page 151; obsolete.
1243. An act to repeal so much of the act, entitled "an act to encourage and protect the manufactures of this state, by laying additional duties on the importation of certain manufactures which interfere with them," as lays an additional duty on wines and fruit, the growth or product of the kingdom of Portugal: passed 26th September, 1786; recorded in law book No. III. page 151; obsolete.

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1786. CHAP. 1244. An act to prevent, for a limited time, the sales of lands for the payment of taxes, within the frontier counties of this state, belonging to non-resident owners thereof, and to allow the said owners a further day of appeal: passed 27th of November, 1786; recorded in law book No. III. page 158; expired.
1246. An act to suspend the powers of the trustees of the county of Westmoreland, and for settling their accounts: passed 27th December, 1786; recorded in law book No. III. page 160; repealed 14th February, 1789.
1247. An act for the relief of Isaac Wynn, Philip Buckius, John Harmer, Adam Alberger, Edward Dickinson, George Knox, Charles Brown, Elias Rosa, Harman Courter, Dennison Hume, Thomas Harrison, William Ritchie, and Cato Hill, insolvent debtors, confined in the gaol of the city and county of Philadelphia: passed 28th December, 1786; recorded in law book No. III. page 153; private act; obsolete.
1249. An act appointing deputies to the convention, intended to be held in the city of Philadelphia, for the purpose of revising the federal constitution: passed 30th December, 1786; recorded in law book No. III. page 163; obsolete.
1787. 1251. An act to exonerate the contributors to the Pennsylvania Hospital from a debt due to this commonwealth, upon a loan made to them in the year of our Lord one thousand seven hundred and eighty: passed 28th February, 1787; recorded in law book No. III. page 166; private act; obsolete.
1254. An act to alter and amend an act, entitled "an act to prevent frauds in the packing and preserving of shad and herring for exportation: passed 5th March, 1787; recorded in law book No. III. page 163; supplied by act of 19th of March, 1810.
1256. An act to exonerate and discharge David Cloyd, late treasurer of state taxes in and for the county of Chester, from the payment of two hundred and seventy pounds, nine shillings, specie, of which he was robbed: passed 5th of March, 1787; recorded in law book No. III. page 172; private act; obsolete.
1258. An act to enable the committee of the estate of John Vanderon (who is *non compos mentis*) to sell and convey some parts of his real and personal estate, for the payment of some of his debts; to mortgage other parts of his real estate, to secure the payment of others of his debts; to lease for a term of years parts of his real estate; and for other purposes therein mentioned: passed 7th March, 1787; recorded in law book No. III. page 176; private act; obsolete.
1259. An act for co-operating with the state of Massachusetts Bay agreeable to the articles of confederation, in the apprehending of the proclaimed rebels, Daniel Shays, Luke Day, Adam Wheeler, and Eli Parsons: passed 10th March, 1787; recorded in law book No. III. page 178; obsolete.
1260. An act to alter and amend the act, entitled "An act for the relief of officers, soldiers and seamen, who, in the course of the late war have been wounded, or otherwise disabled, in the service of this State, or of the United States:" passed 10th March, 1787; recorded in law book No. III. page 178; repealed.
1264. An act to amend an act, entitled "An act for the regulation of bankruptcy:" passed 15th March, 1787; recorded in law book No. III. page 188; obsolete.
1265. An act to amend and explain the act, entitled "An act to encourage and protect the manufactures of this state, by laying additional duties on the importation of certain manufactures which interfere with them, and for the further encouragement of the navigation of the state: passed 15th March, 1787; recorded in law book No. III. page 191; obsolete.
1266. An act to direct and authorize the laying out of an highway through this state, from the waters of the river Potomack to the river Ohio, in order to extend and facilitate the intercourse which is designed to be opened between the same rivers: passed 15th March, 1787; recorded in law book No. III. page 194; expired.

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1787. CHAP. 1269. A supplement the act, entitled "An act appointing deputies to the convention intended to be held in the city of Philadelphia, for the purpose of revising the federal constitution : passed 28th March, 1787 ; recorded in law book No. III. page 202 ; obsolete.
1270. An act for establishing a court of Admiralty Sessions, for the trial of crimes and offences, other than piracies and felonies, committed on the high seas, or within admiralty jurisdiction : passed 28th March, 1787 ; recorded in law book No. III. page 203 ; obsolete.
1271. A supplement to the act, entitled "An act for the further relief of the public creditors, who are citizens of this state, by receiving on loan certain debts of the United States of America, and for funding the same, and for paying the annual interest of such loans, and the interest of certain debts of this state, every six months" passed 28th March, 1787 ; recorded in law book No. III. page 204 ; obsolete.
1273. An act to make more effectual provision for the payment of one hundred and thirty thousand pounds sterling, granted to the late proprietaries of Pennsylvania by an act, entitled "An act for vesting the estates of the late proprietaries of Pennsylvania in this commonwealth," and for allowing interest on the several instalments thereof, from the times they have fallen, and shall fall due, until actual payment thereof : passed 28th March, 1787 ; recorded in law book No. III. page 213 ; obsolete.
1274. An act for ascertaining and confirming to certain persons called Connecticut claimants, the lands by them claimed within the county of Luzerne, and for other purposes therein mentioned : passed 28th March, 1787 ; recorded in law book No. III. page 210 ; repealed 1st April, 1790.
- ✓ 1275. An act for granting and securing to John Fitch the sole right and advantage of making and employing the steam boat, by him lately invented, for a limited time : passed 28th March, 1787 ; recorded in law book No. III. page 213 ; private act ; expired.
1283. An act to alter the test of allegiance to this commonwealth, required by an act passed the fourth day of March, one thousand seven hundred and eighty-six, entitled "An act for securing to this commonwealth the fidelity and allegiance of the inhabitants thereof, and for admitting certain persons to the rights of citizenship," passed 29th March, 1787 ; recorded in law book No. III. page 233 ; repealed 13th March, 1789.
1285. An act for the granting two hundred pounds of the unappropriated monies of this commonwealth, for mending and repairing the road from Hamburg, on Schuylkill, to the Northumberland county line, by Conrad Minick's saw mill ; passed 29th March, 1787 ; recorded in law book No. III. page 232 ; obsolete.
1288. An act to grant to Oliver Evans, for a term of years, the sole and exclusive right of making and selling within this commonwealth the machines herein described : passed 29th March, 1787 ; recorded in law book No. III. page 229 ; private act ; expired.
1293. An act for granting unto George Wall, junior, the sole and exclusive privilege of making and vending a mathematical instrument, by him invented, for the term of twenty-one years : passed 10th September, 1787 ; recorded in law book No. III. page 319 ; private act ; expired.
1296. An act to repeal part of the act, entitled "an act to regulate the general elections of this commonwealth, and to prevent frauds therein," and to amend and alter the "act for the better regulation of juries," passed 13th September, 1787 ; obsolete.
1298. An act for the relief of Paul Hausman, an insolvent debtor, confined in the gaol of the county of Lancaster : passed 18th September, 1787 ; recorded in law book No. III. page 310 ; private act ; obsolete.
1308. An act for compensating such as have advanced money for raising and enlisting men, required from the several companies of militia by an act, entitled "an act for the greater ease of the militia, and the more speedy and effectual defence of this state," and for compelling such as have received monies for that purpose to account for and pay the same : passed 29th September, 1787 ; recorded in law book No. III. page 252 ; obsolete.

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1787. CHAP. 1309. An act to continue the act of general assembly, entitled "an act for opening and better amending, and keeping in repair, the public roads and highways within this province," passed 29th September, 1787; recorded in law book No. III. page 242; repealed.
1311. An act to provide for a continuation of the salaries of the officers of the land-office, and to ascertain and provide the salary for the judge of the admiralty, and for other purposes therein mentioned: passed 29th September, 1787; recorded in law book No. III. page 250; repealed.
1313. An act to empower certain members of the corporation of the rector, churchwardens and vestrymen of the united episcopal churches of Christ-church and saint Peter's church, in the city of Philadelphia, to sell a certain lot of ground, in the township of the Northern-Liberties: passed 29th September, 1787; recorded in law book No. III. page 245; private act; obsolete.
1315. An act for furnishing the quota of troops required by congress for the protection of the western frontiers, and other purposes therein mentioned: passed 10th November, 1787; recorded in law book No. III. page 333; obsolete.
1316. An act to provide for the wages of members of the state convention, and to defray the expenses of holding the same: passed 10th November, 1787; recorded in law book No. III. page 333; obsolete.
1317. An act to alter and amend an act, entitled "an act for erecting and opening a loan-office, for the sum of fifty thousand pounds," passed 27th November, 1787; recorded in law book No. III. page 335; obsolete.
1788. 1318. A supplement to the act, entitled "an act to alter and amend an act, entitled "an act to remedy the defects of the several acts of assembly heretofore made for regulating the elections of justices of peace throughout this state, and to establish a permanent mode for holding such elections, and to authorize the justices of the peace of the city of Philadelphia to hold the courts of record of the said city, and to make further provision for the due election and return of justices of peace elect," passed 27th February, 1788; recorded in law book No. III. page 336; obsolete.
1319. An act authorizing the supreme executive council to draw an order on the treasurer of this state, for the sum of seventy-nine pounds ten shillings, in favour of Alexander McDowell: passed 27th Feb'y, 1788; recorded in law book No. III. page 336; private act; obsolete.
1323. A supplement to an act, entitled "an act for raising, by way of lottery, the sum of forty-two thousand dollars, for improving the public roads leading from the city of Philadelphia to the western parts of this state, and towards the improving the navigation of the river Schuylkill," passed 3d March, 1788; recorded in law book No. III. page 339; obsolete.
1328. An additional supplement to the acts for the regulation of the militia of the commonwealth of Pennsylvania: passed 22d March, 1788; recorded in law book No. III. page 352; repealed.
1329. An act for destroying the bills of credit of this commonwealth, emitted in pursuance of an act of general assembly, passed the first day of June, one thousand seven hundred and eighty, entitled "an act for funding and redeeming the bills of credit of the United States of America, and for providing means to bring the present war to a happy conclusion: passed 22d March, 1788; recorded in law book No. III. page 351; obsolete.
1332. An act for the purpose of granting the sum of one hundred pounds, for the relief of James M'Manas: passed 28th March, 1788; recorded in law book No. III. page 362; private act; obsolete.
1333. An act to exonerate Joseph Fry, door-keeper of the house of representatives of the freemen of Pennsylvania in general assembly, from any charge for rent, or other demands, for or on account of his occupying of part of the western wing of the state-house, and consuming the herbage of the state-house yard: passed 26th March, 1788; recorded in law book No. III. page 362; obsolete.

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1788. CHAP. 1335. An act to lay a duty on foreign barley and malt imported into this state: passed 29th March, 1788; recorded in law book No. III. page 368; obsolete.
1336. An act to encourage and protect the manufactures of this state: passed 29th March, 1788; recorded in law book No. III. page 374; expired.
1338. An act to suspend an act, entitled "an act for ascertaining and confirming to certain persons, called Connecticut claimants, the lands by them claimed within the county of Luzerne, and for other purposes therein mentioned," passed 29th March, 1788; recorded in law book No. III. page 368; obsolete.
1339. An act for the relief of James Parker, an insolvent debtor, confined in the goal of the city and county of Philadelphia; passed 29th March, 1788; recorded in law book No. III. page 369; private act; obsolete.
- ✓ 1340. An act for vesting in Thomas Gordon, his heirs and assigns, certain estates, forfeited to this commonwealth by virtue of his attainer of high treason: passed 29th March, 1788; recorded in law book No. III. page 365; private act; obsolete.
1341. An act for allowing a further time to distribute the donation lands, promised to the troops of this commonwealth: passed 13th September, 1788; recorded in law book No. III. page 377; expired.
1343. An act to alter and amend so much of the several impost laws of this state, as confines the allowing of drawbacks on goods exported to the original importers thereof, and obliges the exporter to produce certificates of the landing of such goods: passed 17th September, 1788; recorded in law book No. III. page 380; obsolete.
1345. An act for the relief of the suffering inhabitants of the townships of Wayne and Derry, in the county of Cumberland: passed 20th September, 1788; recorded in law book No. III. page 406; obsolete.
1346. An act to compensate the services of lieutenant colonel Francis Montges, in inspecting the militia of the state, and the public arms and stores: passed 20th September, 1788; recorded in law book No. III. page 409; private act; obsolete.
1347. An act to suspend, for six months, the powers of the commissioners of the several counties of this state to make sale of unseated lands, for non-payment of taxes: passed 22d September, 1788; recorded in law book No. III. page 410; expired.
1352. An act to exonerate the frontier inhabitants of Washington county from the payment of taxes: passed 3d October, 1788; recorded in law book No. III. page 403; expired.
1354. An act to appoint commissioners to settle the accounts of certain commissioners, who by a certain act of assembly, passed the ninth day of March, one thousand seven hundred and seventy one, were appointed to settle the accounts of certain other commissioners, who, by a certain act of assembly, passed the twentieth day of September, one thousand seven hundred and sixty-five, were appointed to settle the accounts of the managers of a lottery which had been set up and drawn, for the purpose of erecting a bridge over Skipack creek, in the then county of Philadelphia (now Montgomery,) and to receive voluntary donations and subscriptions for perfecting said bridge: passed 3d October, 1788; recorded in law book No. III. page 407; private act; obsolete.
1355. An act to authorize the supreme executive council to draw on the state-treasurer for a sum of money, for defraying the expense of purchasing of the Indians lands on Lake Erie: passed 3d October, 1788; recorded in law book No. III. page 406; obsolete.
1358. An act in aid of an act of the Delaware state, for the settlement of the accounts of the Wilmington lottery: passed 3d October, 1788; recorded in law book No. III. page 416; private act; obsolete.
1359. An act to recompence John Hague, for introducing into this state a useful machine for carding cotton: passed 3d October, 1788; recorded in law book No. III. page 418; private act; obsolete.

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1788. CHAP. 1360. An act for the payment of an additional sum of money to Gunning Bedford and others, for their services in erecting a triumphal arch in the city of Philadelphia: passed 3d October, 1788; recorded in law book No. III. page 420; private act; obsolete.
1361. An act to establish a board of Wardens for the port of Philadelphia, and for other purposes therein mentioned: passed 4th October, 1788; recorded in law book No. III. page 385; repealed.
1362. An act directing the time, places and manner of holding elections for representatives of this state in the congress of the United States, and for appointing electors on the part of this state, for choosing a president and vice-president of the United States: passed 4th October, 1788; recorded in law book No. III. page 421; obsolete.
1363. A supplement to the act, entitled "an act to enforce the due collection and payment of taxes within this commonwealth," passed 4th October, 1788; recorded in law book No. III. page 425; repealed.
1364. An act for the better ascertaining, and making good, losses of public monies by robberies: passed 4th October, 1788; recorded in law book No. III. page 428; obsolete.
1367. An act to grant the sum of one hundred and eighty-seven pounds ten shillings to captain William Ross, in consideration of his services to this commonwealth: passed 4th October, 1788; recorded in law book No. III. page 436; private act; obsolete.
1368. An act for rewarding the person or persons concerned in apprehending George Sinclair, attainted by outlawry: passed 4th Oct'r, 1788; recorded in law book No. III. page 437; private act; obsolete.
1370. An act for the relief of Sarah Caldwell: passed 4th October, 1788; recorded in law book No. III. page 440; private act; obsolete.
1371. An act to enable such persons within this state, who are entitled to vote in the election of representatives of this state in the house of representatives of the United States, and who shall be necessarily out of their respective districts at the ensuing election, to give their votes in the several places where public business shall require their attendance: passed 13th November, 1788; recorded in law book No. III. page 442; obsolete.
1372. An act to suspend, for a limited time, the collection of all militia fines, incurred under laws passed before the twenty-second day of March, one thousand seven hundred and eighty-eight: passed 19th November, 1788; recorded in law book No. III. page 443; repealed.
1373. A supplement to the act, entitled "an act to provide for the payment of the principal and interest of such of the bills emitted pursuant to resolution of congress of the eighteenth day of March, one thousand seven hundred and eighty;" and an act of the legislature of this state of June the first, one thousand seven hundred and eighty, as shall remain unredeemed on the thirty-first day of December, one thousand seven hundred and eighty-six: passed 22d November, 1788; recorded in law book No. III. page 444; obsolete.
1374. An act for the relief of Henry Cleland Baker, Joseph Richard Robinson, Benjamin Burton, and Robert Hunter, insolvent debtors, confined in the gaol of the city and county of Philadelphia: passed 22d November, 1788; recorded in law book No. III. page 444; private act; obsolete.
1789. 1376. An act to enable aliens to purchase and hold real estates within this commonwealth: passed 11th February, 1789; recorded in law book No. III. page 449; expired.
1377. An act to establish a volunteer company of artillery in the city of Philadelphia: passed 11th February, 1789; recorded in law book No. III. page 450; repealed.
1378. An act to repeal an act, entitled "an act to suspend the powers of the trustees of Westmoreland county," passed 14th February, 1789; recorded in law book No. III. page 450; obsolete.

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1789. CHAP. 1380. An act to repeal so much of an act of general assembly of this commonwealth, as prohibits dramatic entertainments within the city of Philadelphia, and the neighbourhood thereof: passed 2d March, 1789; recorded in law book No. III. page 452; obsolete.
1381. A supplement to the act, entitled "an act for erecting part of Bedford county into a separate county," passed 2d of March, 1789; recorded in law book No. III. page 453; obsolete.
1382. An act to repeal part of an act, entitled "an act to confirm the estates and interests of the college, academy and charitable school of the city of Philadelphia, and to amend and alter the charters thereof, conformably to the revolution and to the constitution and government of this commonwealth, and to erect the same into an university," passed 6th March, 1789; recorded in law book No. III. page 454; obsolete.
1385. An act to repeal all the laws of this commonwealth requiring any oath or affirmation of allegiance from the inhabitants thereof: passed 13th of March, 1789; recorded in law book No. III. page 476; obsolete.
1386. An act to suspend the sale of lands for non-payment of taxes and for other purposes therein mentioned: passed 18th March, 1789; recorded in law book No. III. page 477; expired.
1388. An act for the relief of Robert Beatty and Benjamin Moore, insolvent collectors, confined in the gaols of Cumberland and Dauphin counties: passed 18th March, 1789; recorded in law book No. III. page 498; private act; obsolete.
1390. An act for compensating Evan Owen, for supplies by him furnished the civil officers of Northumberland county in the year one thousand seven hundred and seventy-five: passed 21st March, 1789; recorded in law book No. III. page; 481; obsolete.
1391. An act for enlarging the time limited by the act, entitled "an act for facilitating the redemption of the bills of credit emitted in the year one thousand seven hundred and eighty-one, and for redeeming part of the funded debt of this state; for extending the time for patenting lands, which were located before the declaration of independency; and for giving a right of pre-emption to actual settlers, for procuring warrants for lands by them occupied," passed 21st March, 1789; recorded in law book No. III. pa. 479; expired.
1393. An act to appropriate divers funds, accruing and growing due to this commonwealth, towards the payment of the expenses of government, and to provide a fund for other purposes: passed 26th March, 1789; recorded in law book No. II. page 514; obsolete.
1394. An act to repeal so much of an act, entitled "an act for raising and collecting of money on the specified articles therein mentioned, for the support of government, and for other purposes therein mentioned," as imposes a tax on the owners or possessors of any one horse two wheeled sulkey, scolo, chair or chaise, or of any covered family waggon, commonly called a caravan: passed 26th March, 1789; recorded in law book No. III. page 499; obsolete.
1395. An act to enable the rector, church wardens and vestrymen of the protestant episcopal church of saint John, at Yorktown, to mortgage the parsonage-house, and certain lots of ground: passed 26th March, 1789; recorded in law book No. III. page 495; private act; obsolete.
1396. An act to assist the cotton manufactures of this state: passed 26th March, 1789; recorded in law book No. II. page 505; obsolete.
1398. An act to amend an act, entitled, "An act for amending the penal laws of this state: passed 27th March, 1789; recorded in law book No. III. page 500; repealed.
1399. An act for the more effectual collection of the poor tax, in the city of Philadelphia, the district of Southwark, and the townships of Moyamensing and the Northern Liberties, and to provide, in a more convenient and salutary manner, for the confinement of disorderly persons, found and apprehended in the said city, district and townships: passed 27th March, 1789; recorded in law book No. III. page 485; repealed and supplied.

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1789. CHAP. 1404. An act to repeal so much of any act or acts of assembly of this commonwealth, as directs the payment of the new loan debt, or the interest thereof, beyond the first day of April next, and for other purposes therein mentioned ; passed 27th March, 1789 ; recorded in law book No. III. page 506 ; obsolete.
1405. An act to establish a board of appeal within the several counties of this state, and to grant exonerations in cases of militia fines ; passed 27th March, 1789 ; recorded in law book No. III. page 515 ; repealed.
1406. A supplement to an act, entitled, " An act to establish a board of wardens, for the port of Philadelphia, and for other purposes therein mentioned : " passed 27th March, 1789 ; recorded in law book No. III. page 486 ; obsolete.
1407. An act in aid of the roads therein mentioned : passed 27th March, 1789 ; recorded in law book No. III. page 513 ; obsolete.
1408. An act for raising, by way of lottery, the sum of eight thousand dollars, for defraying the expense of erecting a common hall in the city of Philadelphia, and two thousand dollars for the use of Dickinson college, in the borough of Carlisle ; passed the 27th of March, 1789 ; recorded in law book No. III. page 509 ; obsolete.
1409. An act to enable the justices of the orphans' court to authorize and empower Frances Budden to sell and convey so much of the lands and tenements of her late husband, James Budden, deceased, as shall be necessary for the payment of his debts, and for other purposes therein mentioned : passed 27th March, 1789 ; recorded in law book No. III. page 504 ; private act ; obsolete.
1410. An act to enable John Hewson to enlarge and carry on the business of calico printing and bleaching within this state : passed 27th of March, 1789 ; recorded in law book No. III. page 512 ; private act ; obsolete.
1412. An act for the appointment of a register-general, for the purpose of registering the accounts of this state : passed 28th March, 1789 ; recorded in law book No. III. page 516 ; repealed 30th March, 1811.
1413. A supplement to the act, entitled " a supplement to the act, entitled, " an act to enforce the due collection and payment of taxes within this commonwealth : " passed 28th March, 1789 ; recorded in law book No. III. page 517 ; repealed.
1416. An act to alter the times of holding the courts of general quarter sessions of the peace and gaol delivery in the several counties within this commonwealth : passed 7th September, 1789 ; recorded in law book No. III. page 524 ; obsolete.
1419. An act to grant and secure to Robert Leslie for a limited time the sole and exclusive right and benefit of constructing, making, and selling, within this commonwealth, the improvements by him lately invented on clocks and watches : passed 7th September, 1789 ; recorded in law book No. III. page 528 ; private act ; expired.
1420. An act for the relief of James Petigrew, an insolvent debtor in the county of Northampton, confined in the gaol of said county : passed 11th September, 1789 ; recorded in law book No. III. page 530 ; private act ; obsolete.
1423. An act to cede to the United States, the right to exercise exclusive legislation over such district as may become the seat of government thereof within this commonwealth : passed 14th of September, 1789 ; recorded in law book No. III. page 534 ; obsolete.
1431. An act further to continue an act, entitled, " An act to suspend the sale of lands for nonpayment of taxes, and for other purposes therein mentioned : " passed 26th September, 1789 ; recorded in law book No. III. page 551 ; expired.
1435. An act to appropriate the sum of five thousand pounds annually, for the purposes therein mentioned : passed 28th September, 1789 ; recorded in law book No. IV. page 4 ; obsolete.
1436. An act empowering Mary Pine to dispose of, by way of lottery, a certain lot, and the buildings thereon erected, together with a collection of paintings and prints, lately the property of her deceased husband, Robert Edge Pine : passed 28th September, 1789 ; recorded in law book No. III. page 555 ; private act.

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1789. CHAP. 1437. An act in favour of John Houston : passed 28th September, 1789; Recorded in law book, No. III. page 557 ; private act ; obsolete.
1438. An act for vesting in James Rumsey, esquire, the exclusive right and privilege of making, using, and vending divers engines, machines and devices, by him invented or improved, for a term of years therein mentioned : passed 28th September, 1789 ; recorded in law book No. IV. page 1 ; private act ; expired.
1439. An act to authorize the supreme executive council to draw on the state treasurer for an additional sum of money, for defraying the expense of purchasing of the Indians lands on lake Erie : passed 28th September, 1789 : recorded in law book No. IV. page 6 ; obsolete.
1441. An act relating to sheriffs and coroners : passed 29th September, 1789, recorded in law book No. IV. page 13 ; repealed 28th of March, 1803.
1443. An act relating to drawbacks and discount : passed 29th September, 1789 : recorded in law book No. IV. page 17 ; obsolete.
1448. An act to provide for the payment of the demands of Joseph Perkins, Abraham Morrow, and John Nicholson, upon this commonwealth : passed 29th September, 1789 ; recorded in law book No. IV. page 13 ; private act ; obsolete.
1449. A supplement to an act, entitled, " An act for raising, by way of lottery, the sum of eight thousand dollars, for defraying the expense of erecting a common hall in the city of Philadelphia, and two thousand dollars for the use of Dickinson college, in the borough of Carlisle," passed 29th of September, 1789 ; recorded in law book No. IV. page 15 ; obsolete.
1450. An act for the relief of Robert Ross and Francis White : passed 29th September, 1789 ; recorded in law book No. IV. page 21 ; private act ; obsolete.
1452. Supplement to an act, entitled, " An act for the appointment of a register-general, for the purpose of registering the accounts of this state : passed 30th September, 1789 ; recorded in law book No. IV. page 36 ; repealed 30th March, 1811.
1454. An act to ascertain the security to be given by the treasurer of the state for the time being : passed 19th November, 1789 ; recorded in law book No. 4. page 38 ; repealed 30th March, 1811.
1455. An act for granting present relief to the wounded and disabled soldiers who have received pensions from this state : passed 20th November, 1789 ; recorded in law book No. IV. page 39 ; obsolete.
1456. An act to repeal so much of any act or acts of the general assembly of this state, as authorizes and directs the receiving of certificates of the United States in payment of lands purchased, or to be purchased, of this state : passed 20th of November, 1789 ; recorded in law book No. IV. page 40 ; obsolete.
1457. An act to limit the time of exhibiting claims against the state for supplies furnished, or services rendered, during the late war : passed 21st November, 1789 ; recorded in law book No. IV. page 40.
1458. An act to defray the expenses of holding the state convention : passed 25th November, 1789 ; recorded in law book No. IV. page 41 ; obsolete.
1459. An act to limit the time for exchanging and redeeming certain bills of credit and certificates, therein mentioned : passed 4th December, 1789 ; recorded in law book No. IV. page 41 ; obsolete.
1460. An act to continue an act, entitled " an act for opening and amending the public roads and highways within this province : " passed 4th December, 1789 ; recorded in law book No. IV. page 43 ; expired.
1462. An act to repeal so much of an act, entitled, " An act to provide for a continuation of the salaries of the officers of the land-office, and to ascertain and provide the salary for the judge of the admiralty, and for other purposes therein mentioned," as relates to the salary of the judge of the admiralty : passed 7th December, 1789 ; recorded in law book No. IV. page 45 ; obsolete.

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1789. CHAP. 1463. An act to suspend for the time therein mentioned, part of an act, entitled, "An act for furnishing the quota of this state, towards paying the annual interest of the debt of the United States, and for funding and paying the interest of the public debts of this state:" passed the 8th December, 1789; recorded in law book No. IV. page 44; expired.
1464. An act to provide for the salaries of the officers of the land-office: passed 8th December, 1789; recorded in law book No. IV. page 46; obsolete.
1467. A supplement to an act, entitled, "An act to improve the breed of horses, and regulate rangers:" passed the 9th December, 1789; recorded in law book: repealed 20th March, 1810.
1468. Supplement to an act, entitled, "An act to incorporate the city of Philadelphia:" passed 9th of December, 1789; recorded in law book No. IV. page 56: repealed 20th March, 1810.
1790. 1469. A supplement to the act, entitled, "An act to provide for the salaries of the officers of the land-office," enacted the eighth day of December, one thousand seven hundred and eighty-nine: passed 19th February, 1790; supplied by act of 30th of March, 1811; recorded in law book No. IV. page 58.
1471. An act to regulate the exportation of potash and pearlash: passed 22d February, 1790; recorded in law book No. IV. page 58.
1472. An act to repeal part of an additional supplement to the acts for the regulation of the militia of this commonwealth: passed 3d of March, 1790; recorded in law book No. IV. page 63; repealed.
1474. An act to compensate William Lyon, esquire: passed 3d March, 1790; recorded in law book No. IV. page 61; expired.
1475. An act to reimburse Gabriel Coxe, George Valendigham, and Andrew Sweringen, for monies advanced by them in the defence of the frontiers of Washington county: passed 3d March, 1790; recorded in law book No. IV. page 62; private act; obsolete.
1476. An act directing the payment of accounts of sundry deputy-surveyors of the depreciation lands: passed 3d March, 1790; recorded in law book No. IV. page 64; obsolete.
1477. An act relating to the securities to be given by sheriffs and coroners: passed 5th March, 1799; recorded in law book No. IV. page 65; repealed 28th March, 1803.
1478. An act to suspend, for a limited time, so much of the act of assembly to regulate the fishery in the rivers Codorus and Conewago, in York county, as relates to the erecting of platforms to the dams therein mentioned: passed 5th March, 1790; recorded in law book No. IV. page 66; expired.
1479. An act for settling the accounts of James Rowan, late collector of taxes in the county of Philadelphia, and for other purposes therein mentioned: passed 6th March, 1790; recorded in law book No. IV. page 67, obsolete.
1486. An act to authorize and direct the supreme executive council to appoint commissioners to audit and settle the accounts between Bedford and Huntingdon counties, and for other purposes therein mentioned: passed 27th March, 1790; recorded in law book No. IV. page 78; obsolete.
1488. An act for the relief of John Lyttle, John Webb, and William Murray: passed 27th March, 1790; recorded in law book No. IV. page 75; private act; obsolete.
1489. An act in favour of Reading Howell, and for other purposes therein mentioned: passed 27th March, 1790; recorded in law book No. IV. page 76; obsolete.
1490. An act for compensating Laughlin Mc'Cartney and others, therein mentioned, for supplies by them furnished the civil officers of Northumberland county, in the year one thousand seven hundred and seventy-five: passed 27th March, 1790; recorded in law book No. IV. page 85; obsolete.

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1790. CHAP. 1491. An act for further enlarging the time limited by the act, entitled "An act for facilitating the redemption of the bills of credit emitted in the year one thousand seven hundred and eighty-one, and for redeeming part of the funded debt of this state; for extending the time for patenting lands which were located before the declaration of independency, and for giving a right of pre-emption to actual settlers for procuring warrants for the lands by them occupied;" passed 29th March, 1790; recorded in law book No. IV. page 86; obsolete.
1493. An act to reduce the tax upon writs issued out of the county court of common pleas of Philadelphia county, during the time therein limited: passed 30th March, 1790; recorded in law book No. IV. page 89; expired.
1495. An act to enforce the due collection of the revenues of the state, and for other purposes therein mentioned: passed 1st of April, 1790; recorded in law book No. IV. page 90; repealed 30th March, 1811.
1496. An act to make provision for repairs at Mud island: passed 2d April, 1790; recorded in law book No. IV. page 100; obsolete.
1502. A supplement to an act, entitled "an act to establish a board of appeal within the several counties of this state, and to grant exonerations in cases of militia fines." passed 5th April, 1790; recorded in law book No. IV. page 103; repealed.
- ✓ 1506. An act for the payment of the claim of Turnbull, Marmie, and Company: passed 5th April, 1790; recorded in law book No. IV. page 104; private act; obsolete.
1507. An act in favour of Robert Thorn: passed 5th April, 1790; recorded in law book No. IV. page 105; private act; obsolete.
1508. An act relating to the sales of lands therein mentioned: passed 6th April, 1790; recorded in law book No. IV. page 124; obsolete.
1509. An act for raising, by way of lottery, the sum of eight hundred pounds, for redeeming the house of public worship belonging to the Hebrew congregation of the city of Philadelphia from the mortgage and incumbrance thereon; passed 6th April, 1790; recorded in law book No. IV. page 121; private act; obsolete.

A C T S

OF THE

General Assembly of Pennsylvania.

Passed at a Session which commenced May 24th, 1781,
and ended June 25th, 1781.

JOSEPH REED, PRESIDENT OF THE EXECUTIVE COUNCIL.

F. A. MUHLENBERG, SPEAKER OF THE GENERAL ASSEMBLY.

1781,

CHAPTER DCCCCXXXIV.

An ACT for the repeal of so much of the laws of this commonwealth, as make the continental bills of credit, and the bills emitted by the resolves or acts of the Assemblies of the said commonwealth, a legal tender, and for other purposes therein mentioned.

WHEREAS the honourable the Continental Congress, and the different Legislatures of the United States of America, struggling in support of their inborn rights and invaded liberties, have been necessitated, by reason of the scarcity of specie, to emit large sums of paper currency, by the rapid depreciation whereof the said United States have laboured under great difficulties in procuring the necessary supplies for carrying on the present war: And whereas the quantity of specie being of late considerably increased within the said United States, the said Congress have, in the most pressing manner, recommended to the different Legislatures of the same States to repeal all laws, making the paper bills of credit of the United States a legal tender, equal to gold or silver: In compliance with the said recommendation, and for attaining the good ends and purposes thereby intended,

II. *Be it enacted, and it is hereby enacted, That so much of all and every of the laws of this commonwealth, as declare the bills of credit emitted by the honourable the Continental Congress, or by the resolves of the Assemblies of the late province of Pennsylvania, or by the present or late Assembly or Assemblies of this commonwealth, to be a legal tender, in discharge of debts, contracts or*

Part of di-
vers acts
repealed.

1781. demands, and so much of the said laws, as impose any penalty or forfeiture upon persons refusing to accept any of the said bills of credit in satisfaction of any debts, contracts or demands, and so much of the said laws, as impose any penalty or forfeiture upon persons refusing to receive the said bills of credit in payment for any live stock, necessary of life, commodity, article or goods whatsoever, or upon persons offering such goods or articles for a less price or smaller sum of money to be paid in gold or silver, or other current money, than in the bills of credit aforesaid, or upon persons giving or receiving a greater nominal sum of the said bills of credit for a less in gold or silver, shall be, and the same is and are hereby repealed and made void.

Proviso, as to certain paper bills, which are to be received in payment of lands except forfeited estates.

III. *Provided always nevertheless,* That the foregoing clause shall not extend, or be construed to extend, to repeal, alter or make void any laws, or sections or clauses of laws, whereby the paper bills of credit, emitted in pursuance of an act passed on the twenty-fifth day of March, one thousand seven hundred and eighty, and the paper bills of credit emitted in pursuance of the act passed on the seventh day of April, one thousand seven hundred and eighty-one, are made receivable, at the same rate as gold and silver, in the payment of the arrearages of purchase money due for lands or lots sold, or to be sold or conveyed by this state, forfeited estates only excepted.

No tender to be affected, if duly made, &c.

IV. *Provided also,* That nothing in this act contained shall affect any tender made in due and legal manner, under and according to the directions of any of the said laws, or any suits, actions or judgments, which have been commenced or had, or which are now depending, or which hereafter may be brought, for or by reason of any tender made before the passing of this act.

Debts, &c. contracted since January, 1777, and not satisfied or discharged, how to be paid.

V. *And be it further enacted,* That all debts, duties, rents, annuities, and other demands, granted or contracted for by any deed, will, mortgage, bond, specialty, bill of exchange, note, assumpsit, or otherwise, since the first day of January, one thousand seven hundred and seventy-seven, which were expressed to be paid and discharged in any foreign money, or in gold and silver money of any denomination, or in bullion, or in any commodity, and which have not since been paid and satisfied, or discharged, shall be deemed, construed and taken to be yet due and owing from debtors to creditors in such money or other commodity, as in the said contracts were expressed, and the same may be sued for and recovered in any court of justice within this commonwealth, having competent jurisdiction, in so much gold or silver money, as shall be equal in value to the debt or duty, according to the terms of the contract.

VI. *And whereas* most of the debts contracted before the first day of January, one thousand seven hundred and seventy-seven, are due and owing from persons, who, from principles of honour and honesty, have declined paying their creditors with a depreciated paper currency, when by law they might have so done, and it would be unreasonable that such debtors should be compelled to discharge their old debts in gold or silver money, until it shall become more plenty and easier to be acquired :

Rents, &c. contracted before the

VII. *Be it therefore enacted,* That where any Judgment already hath been, or hereafter shall be, entered in any Court of Record

within this commonwealth, by default, upon the confession of the party, the report of referees, or the verdict of a jury, or otherwise, for any sum of money contracted for or due for rents, ground-rents or annuities, before the first day of January, one thousand seven hundred and seventy-seven (debts due to the state excepted) the said court is hereby authorized if the same be not ascertained by the said confession, report or verdict) to ascertain how much of the said sum of money is due to the plaintiff for the principal sum due, and how much thereof is for interest, damages, costs and charges, and to give judgment for the whole sum, which judgment shall remain as a lien upon the real estate of the defendants, in the same manner as judgments at law bind such estate; and thereupon the said court shall award execution against the defendant for so much of the said sum only, as the said interest, damages, costs and charges, shall amount to, which money shall be levied, recovered and paid, in gold and silver money; but no execution shall issue for the principal sum until two years after the passing of this act, or until permission shall be given for that purpose by an act of the Assembly of this commonwealth; but the defendant shall nevertheless pay the interest of the said principal sum yearly, as it shall grow due, and in default thereof the plaintiff shall be entitled to writs of execution, as often as there shall be occasion to recover the same.*

1781.

1st of January, 1777, may be sued for, &c.

[* See the notes to chap. 924, vol. 1, pa. 422.]

Proviso respecting defendants, who have not sufficient real estates, &c.

VIII. *Provided always nevertheless*, That if the defendants in any such cause shall not be, at the time of rendering the said judgment, seised of a sufficient real estate within this commonwealth, in his own right, to secure the said debt, and shall be about to depart from this state, without leaving such real estate, and shall refuse to give other security for the said principal sum, to the satisfaction of the said court, then, and in such case, the said court are hereby authorized and required to award execution for the whole sum contained in the said judgment, as well principal as interest, damages, costs and charges, any thing herein contained to the contrary notwithstanding.

IX. And in order to prevent unnecessary suits, and to give debtors a reasonable time to prepare themselves for payment of their old debts before any suit can be brought, *Be it enacted*, That no suit shall be commenced against any person (other than the subjects of his Britannic Majesty) for any debt or duty contracted for before the first day of January, one thousand seven hundred and seventy-seven, under or by virtue of this act, where the sum demanded exceeds fifty pounds, within less than six months from the passing of this act, unless the creditors shall have demanded from the person of the debtor, or by a note in writing left at the place of his abode, satisfaction of the said debt, at least three months before bringing his suit, or unless the creditor, or some person for him, shall swear or affirm, that he apprehends a danger of losing his debt by the delay.†

Debts exceeding fifty pounds, contracted before the 1st of January, 1777, shall not be sued for in less than six months after passing this act, unless, &c.

[† See the notes to chap. 924, vol. 1, pa. 422.]

X. *And be it further enacted*, That nothing in this act contained shall extend to revive any debts or demands, which were, on or before the first day of January, one thousand seven hundred and seventy-six, barred by any act for the limitation of actions then in force; and that no debt or demand, which was not barred by such

Debts on or before the 1st of January, 1776, barred by the act for limitation of actions

1781. act for the limitation of actions on the said first day of January, one thousand seven hundred and seventy-six, shall be barred by the said act, until two years after the passing of this act, and until such time as is limited by law, according to the nature of each case.

not to be re-
vised, &c.

XI. And whereas divers persons, as agents, factors, bailiffs and receivers, sheriffs, attornies at law and in fact, executors, administrators, guardians, trustees and other persons, in right of their respective offices, trusts and appointments, may have received sums of money, for the use of their principals and persons interested, some of whom may have applied such monies to their own use, others may have kept the same by them, until it depreciated to a much greater degree, and others may have placed the same out on interest, for the use and benefit of their principals, and it is fit and right that justice should take place in such varied cases, as nearly as may be ascertained :

Agents, Fac-
tors, &c.
receiving
money, and
applying it
to private
use, &c.

XII. *Be it therefore enacted*, That where any agent, factor, bailiff, or receiver, sheriff, attorney at law or in fact, executor, administrator, guardian, trustee, or other person, has, in right of his office, trust or appointment, received any sum or sums of money, for the use of his or their principals, or persons interested, and have applied the same to their own private use, in such case he or they shall be accountable to his or their principals or persons interested as aforesaid, for so much gold and silver money, as the said bills of credit, or other money, so by them received, were worth at the time of such application, according to the rate of depreciation affixed to the act entitled *An Act directing the mode of adjusting and settling the payment of debts and contracts entered into and made between the first day of January, one thousand seven hundred and seventy-seven, and the first day of March, one thousand seven hundred and eighty-one, and for other purposes therein mentioned*, passed the third day of April, one thousand seven hundred and eighty-one.* And where any such agent, factor, bailiff, receiver, sheriff, attorney at law or in fact, executor, administrator, guardian, trustee, or other person, having received any sum or sums of money as aforesaid, shall render an account, on oath or affirmation, of the manner of his disposing of the same, and of the profit or loss arising thereupon, and the principal or other person interested as aforesaid shall not be able to disprove the same, in case of loss, then, and in such case, such profit or loss shall go to the benefit or prejudice of the principals or persons interested as aforesaid, allowing a reasonable compensation to such agent, factor, bailiff, receiver, sheriff, attorney at law or in fact, executor, administrator, guardian, trustee or other person, for his trouble in managing the same ; and if any such agent, factor, bailiff, receiver, sheriff, attorney at law or in fact, executor, administrator, guardian, trustee, or other such person receiving as aforesaid, shall decline to make such oath or affirmation, and to render such account, it shall be presumed that he applied the said monies to his own use, and he shall be accountable therefor, in the manner herein before mentioned in such cases.

* Vol. 1,
chap. 924.

XIII. And whereas by an act of Assembly of this commonwealth, passed the twenty-seventh of November, one thousand seven hundred and seventy-nine, entitled *An Act for the better support of cer-*

tain officers of this state, and for ascertaining the specific fines and penalties which they may incur by a neglect of duty* the fees of the said officers, and the fines and penalties which they might incur by a neglect of duty, were regulated by the price of wheat, which has been found inconvenient and uncertain.

1781.

* chap. 864.

XIV. *Be it therefore enacted*, That, from and after the passing of this act, all the fees due to the officers in the said act mentioned, and all the fines and penalties which they have or may incur by a neglect of duty, shall be paid, levied, collected and received by and from them in gold and silver money, as they were regulated by law or practice, under the late government of Pennsylvania, before the first day of July, one thousand seven hundred and seventy-six, any thing in the said law to the contrary notwithstanding.

Fees of certain officers, and the fines incurred, to be paid in gold, &c.

XV. And whereas by an act of Assembly of this commonwealth, passed the eighth day of March, one thousand seven hundred and eighty, entitled *An Act to restore and ascertain divers fines, penalties and forfeitures, hereafter mentioned, which may be incurred by the breach of certain acts of Assembly of this commonwealth*, the said fines penalties and forfeitures, therein mentioned, were also regulated by the price of wheat, which mode has been found inconvenient, uncertain and inadequate: *Be it therefore enacted*, That all fines, penalties and forfeitures, of every kind, imposed by virtue of any acts of the Assemblies of the late province of Pennsylvania, which are now in force, shall be levied, collected and recovered in so much gold and silver money, as in the said several acts is particularly inflicted and respectively specified; and all fines, penalties and forfeitures, imposed by any acts of the Assembly of this commonwealth, since the revolution, shall be levied, collected and recovered in so much gold and silver money, as the sum specified in the respective acts, for the said fines, penalties and forfeitures, were worth at the several times of passing the said acts, according to the rate of depreciation aforesaid.†

† chap. 877.

All fines imposed by acts of Assembly to be recovered in gold, &c.

‡ See chap. 1051, 1134.

XVI. *Provided always, and be it further enacted*, That all debts or contracts which have been entered into at any time, from or since the first day of March, one thousand seven hundred and eighty-one, or shall be entered into hereafter, shall be paid and discharged according to the special nature of the contract, that is to say; contracts made for gold and silver shall be paid and discharged in the same; and contracts made for paper currency of any emission shall be payable in the same emission, excepting, only, that contracts entered into as above for old continental currency (if any such there be) shall be liquidated and paid at specie value, which value shall be ascertained and determined by a Justice of the Peace, or the Justices of the Common Pleas, as the case may be, within their respective jurisdictions.

Contracts since March, 1781, to be discharged according to their nature, except, &c.

XVII. *And be it further enacted*, That nothing in this act shall be extended to prevent the receiving the bills of credit emitted in consequence of the resolution of Congress of the eighteenth of March, one thousand seven hundred and eighty, in taxes to be laid in pursuance of an act of General Assembly of this state, entitled *A Supplement to an act, entitled An act for funding and redeeming the bills of credit of the United States of America, and for providing*

New continental bills, to be received for certain taxes.

1781. means to bring the present war to an happy conclusion,* passed the nineteenth day of December, one thousand seven hundred and eighty.

* Chap. 910.

Passed 21st June, 1781 —Recorded in Law Book vol. I. page 442. (*p*)

(*p*) The acts here repealed are, chap. 727, passed January 29th, 1777. *McKean's* edition, pa. 7, chap. 741, passed March 20th, 1777, *McKean's* edition, pa. 48.

The operation of the tender laws suspended for three months, by an act passed May 31st, 1780, (chap. 900.) *McKean's* edition, pa. 388.

By an act passed September 22d, 1780, (chap. 907,) *McKean's* edition, pa. 406. The suspension continued until the end of the next sitting of the General Assembly. The act of 31st May, 1780, revived and amended, and continued in force, by act of December 22d, 1780, (chap. 912,) *McKean's* edition, pa. 418. And, by an act passed Feb'y 20th, 1781, (chap. 916) *McKean's* edition, pa. 433, all acts making bills of credit a legal tender were suspended so far, but it was provided, that the act should not be construed to extend "To any Sheriff, Attorney, Executor, Administrator, Guardian, or other person having received money, by legal authority in right of another, but that it should be lawful to make payment, in all such cases as might have been done before the passing of this act, nor to prevent the bills of credit from being of the same value in the payment of taxes, and all other debts and demands whatsoever, as the bills of credit of the United States issued before the eighteenth day of March last, (1780.)

See the depreciation act, and the notes thereto subjoined, vol. 1, pa. 519, (chap. 924.)

The acts for the emission of bills of credit previous to the revolution are, chap. 261, 267, 274, 289, 300, 319, 353, 412, 672, 698, 713, (see post. note to chap. 959;) and after the commencement of the revolution, by an act of March 20th, 1777, (chap. 741, above referred to) the sum of £.200,000, were emitted in bills of credit, and a tax imposed on all real and personal estate for the purpose of sinking the same. The 10th section of the act declared, that all bills of credit bearing date at any time before the 1st of July, 1759, should not pass in payment of any debt or demand after the 1st of October, 1777, except for taxes, in order to sink and destroy the said bills. Supplements to this act, chap. 756, 757.

By an act of March 23d, 1778, (chap. 780,) it was enacted, that the bills of

credit, issued under the authority of the crown of Great-Britain, on or before the 19th of April, 1775, shall cease to be a legal tender in any payment whatsoever, that all acts making them current, shall be repealed, except so far as respects the conviction and punishment of persons counterfeiting, or altering such bills of credit, or uttering the same, knowing them to be counterfeited and altered; and that such parts of all acts, as relate to the sinking the said bills of credit, by taxes, excise, or otherwise, shall also be repealed. The act, however, provided, that such bills of credit might, on or before the 1st of June, 1778, either be paid in taxes, or into the Loan-Office, or exchanged at the State Treasury for an equal sum in the paper money of the Congress, or of the commonwealth: but after the 1st of June, 1778, (with an allowance of a short term to absentees) they were declared to be irredeemable. The provisions of this act were extended to the provincial bills of credit issued by the act of September 30th, 1775, (chap. 713,) by an act of May 25th, 1778, (chap. 789.)

By act of March 28th, 1780, one hundred thousand pounds emitted in bills of credit for the present support of the army, &c. (chap. 896,) made a legal tender by act of the 23d of December, 1780, (chap. 913.) By chap. 931, the Executive was empowered to sell City lots sufficient to redeem so much of the bills emitted by the act of March, 1780, as should not be redeemed by the proceeds of the sale of Province-Island; and by the act of June 25th, 1781, (chap. 937, sect. 5,) for raising additional supplies for the year 1781, certain taxes were imposed, and the bills of credit emitted by the act of March, 1780, were declared to be receivable in payment. These bills were funded on the City Lots and Province-Island, and have been entirely redeemed. Acts passed for redeeming public debts, April 10th, 1792, (chap. 1635,) February 9th, 1793, (chap. 1642,) April 22d, 1794, (chap. 1764.)

It will be obvious, however, that but a small part of the act in the text, can now have any operation. By the 10th sect. of the first article of the constitution of the United States, no State can emit bills of credit, or make any thing but gold and silver a tender in

payment of debts. All the above acts, not printed in this edition, at large, will be found in the table of titles prefixed, with a reference to the records of them, under the appropriate years.

See *Hollingsworth v. Ogle*, 1 Dallas, 1781. 257. *Johnson v. Hocker*, ib. 406. *Eastwich v. Hugg*, ib. 222.

CHAPTER DCCCCXXXVI.

A SUPPLEMENT to an act, entitled *An act for establishing a Land-Office, and for other purposes therein mentioned*.*

* Ante, chap. 929, vol. I, pa. 529.

WHEREAS it appears necessary to explain certain parts of the act, entitled *An act for establishing a Land-Office, and for other purposes therein mentioned*, and to make some amendments thereto. Therefore,

II. *Be it enacted, and it is hereby enacted*, That the meaning of the word location, mentioned in the fifth section of the said act, was, is, and is hereby declared to be, an application made by any person or persons for land in the office of the secretary of the late Land-Office of Pennsylvania, and entered in the books of the said office, numbered and sent to the Surveyor-General's office.

The word location defined.

III. *And be it further enacted*, That it shall and may be lawful to and for the President, or, in his absence, the Vice-President, in Council, to sign all and every warrant and warrants of acceptance, re-survey and partition, as fully as the Governor of the late province of Pennsylvania, or Commissioner of property, might or could have done.

President, &c. to sign warrants of acceptance, re-survey, &c.

IV. *And be it further enacted*, That the Receiver-General shall, once in every month, pay into the hands of the Treasurer of this commonwealth, all monies which shall come into his hands by virtue of the said act, to which this is a supplement, which shall be subject to the disposal of the Legislature of this state, to whom he is to account once in every year.

Receiver-General to pay money to the State-Treasurer once in every month, &c.

V. *And be it further enacted*, That the rate of exchange, at which the Receiver-General shall receive the five pounds sterling for every hundred acres of land, shall and is hereby declared to be, at the rate of one hundred and sixty-six and two thirds of the currency of this state for one hundred pounds sterling.

Rate of exchange at which the Receiver-General is to receive the five pounds sterling.

Passed 25th June, 1781.—Recorded in Law Book vol. I. page 449.

A C T S

OF THE

General Assembly of Pennsylvania.

Passed at a Session which commenced September 4th, 1781.
and ended October 1st, 1781.

1781.

JOSEPH REED, PRESIDENT OF THE EXECUTIVE COUNCIL.

F. A. MUHLENBERG, SPEAKER OF THE GENERAL ASSEMBLY.

CHAPTER DCCCCXLIV.

*A SUPPLEMENT to the act, entitled An act to amend the act, entitled An act for the more effectual supply and honourable reward of the Pennsylvania troops, in the service of the United States of America; and the act, entitled An act to settle and adjust the accounts of the troops of this State, in the service of the United States, and for other purposes therein mentioned.**

*Chap. 869,
930.

WHEREAS, the United States in Congress assembled, by their act of the thirteenth day of June, in the year of our Lord one thousand seven hundred and eighty-one, resolved, and recommended to the several States in the words following, that is to say; "That it be, and hereby is, recommended to the several States, to which the officers of the hospital and medical department now in service respectively belong, or of which they are or were inhabitants, to settle the accounts of the said officers, for depreciation, on the principles established by the resolution of Congress of the tenth day of April, one thousand seven hundred and eighty, and to make provision for paying the balances that may be found due, in the same manner with other officers of the line:" Therefore, in compliance with the act of Congress aforesaid,

[II. *Be it enacted, and it is hereby enacted, That the officers of the hospital and medical department, now in the service of the United States, and who are citizens of this state, shall be, and they are hereby, entitled to all the emoluments and benefits, to all intents and purposes, which the military commissioned officers, chaplains and regimental surgeons of the Pennsylvania line are entitled to under*

Certain officers of the hospital department entitled to the benefits of the acts, to which this is a supplement;

the act entitled "*An act to settle and adjust the accounts of the troops of this State, in the service of the United States, and for other purposes therein mentioned,*" passed the eighteenth day of December, one thousand seven hundred and eighty; and the act, entitled "*An act to amend the act, entitled An act for the more effectual supply and honourable reward of the Pennsylvania troops, in the service of the United States of America,*" passed the tenth day of April, one thousand seven hundred and eighty-one; and shall be entitled to half-pay during life, they, the said officers of the hospital and medical department, now in the service of the United States, and who are or were inhabitants of this state, continuing in service during the present war with Great-Britain. 1781.

such officers
continuing
in service.

III. *Provided always*, That every such officer of the hospital and medical department shall be liable to be called into actual service by the Supreme Executive Council of this State at any time thereafter; and if any of the aforesaid officers on half-pay shall neglect or refuse to go, and continue in said service, when called to it as aforesaid, such half-pay shall, from the time of such neglect or refusal, cease and determine, any thing to the contrary in any law of this State notwithstanding.]

IV. And whereas it may be difficult for the auditors appointed, or to be appointed, by the Supreme Executive Council, to ascertain the rights of the officers of the hospital and medical department, who shall claim the benefits and emoluments granted by this act: Therefore,

[V. *Be it enacted*, That the Supreme Executive Council of this state shall, and they are hereby authorized and empowered to hear and determine upon the respective claims of every person who may apply for the benefits and emoluments granted by this act, and to dismiss every such claim, or issue an order (as the case may require) directing the auditors to settle and adjust the account or accounts of the said officer or officers without delay; and thereupon, and not otherwise, the said auditors shall proceed in the same manner, as is directed respecting the military commissioned officers, chaplains and regimental surgeons of the Pennsylvania line, by the acts, to which this is a supplement.]

Council to
hear claims
and deter-
mine there-
on.

And direct
auditors to
settle ac-
counts, &c.

[See chap.
959.]

[VI. And whereas some doubts have arisen, whether officers and soldiers, who have fallen in battle, or were taken by the enemy, and were exchanged, or died in captivity, before the passing of the act, entitled, "*An act to settle and adjust the accounts of the troops of this state, in the service of the United States, and for other purposes therein mentioned,*" or their widows or children, were entitled to the benefits of the said act: For remedy whereof,

VII. *Be it enacted*, That all officers and privates of this State, whether of the state regiments, flying camp, or militia, made prisoners in the actual service of this or any of the United States, whensoever exchanged, or their legal representatives, shall be, and hereby are, entitled to receive the full depreciation of their pay, to the time of such exchange; and the auditors appointed, or who hereafter may be appointed, by the Supreme Executive Council, to settle the depreciation accounts, are hereby authorized and required to proceed

Officers and
privates of
state regi-
ments, &c.
made prison-
ers, entitled
to deprecia-
tion.

1781.

Their wid-
dows and
children to
have half
pay, &c.

and settle their accounts, in the manner directed for the adjusting and settling the accounts of the troops of this State now in service.

VIII. *And be it further enacted*, That the widows and children of the officers of the said regiments, known by the name of the State regiments of this state, or of the flying camp of this State, who have fallen in battle, or died in captivity, shall be, and are hereby, entitled to receive the half-pay of such officers from and since the time of their death, for and during the time, in the manner, and under the restrictions, mentioned in the fourth, fifth, seventeenth and eighteenth sections of the act, entitled "*An act for the more effectual supply and honourable reward of the Pennsylvania troops, in the army of the United States of America*," passed the first day of March, one thousand seven hundred and eighty; and all arrearages of pay, due to said officers, and depreciation on their pay accounts, to be adjusted and settled as directed in the foregoing clause.*

[* See the
act of March
27th 1780,
chapter 2
for the re-
lief of wi-
dow and
children of offi-
cers and sol-
diers, &c.]

Passed 1st October, 1781.—Recorded in Law Book vol. I. page 460.

A C T S

OF THE

General Assembly of Pennsylvania,

Passed at the sixth General Assembly, the first Session of which commenced October 22d, and ended December 28th, 1781. The second commenced February 11th, and ended April 6th, 1782. And the third commenced August 1st, and ended September 21st, 1782.

FREDERICK AUGUSTUS MUHLENBERG, SPEAKER,

1781.

CHAPTER DCCCCXLVII.

A SUPPLEMENT to the act, entitled, "An Act to prevent the exportation of bread and flour not merchantable, and for repealing, at a certain time, all the laws heretofore made for that purpose."

SECT. I. WHEREAS it has been found, by experience, that sundry amendments and alterations are necessary in the act, entitled "An Act to prevent the exportation of bread and flour not merchantable, and for repealing, at a certain time, all the laws heretofore made for that purpose."

SECT. II. *Be it therefore enacted, and it is hereby enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same,* That when any flour shall be offered for sale, which shall on trial (agreeable to the form mentioned and directed in the aforesaid act) be found packed in casks made of unseasoned materials, every person so offering the same for sale shall be adjudged to pay into the hands of the inspector, for each and every such cask so found, the sum of two shillings; and the owner of such flour shall have his remedy against the miller, or cooper who has furnished the cask, for the damages which he may sustain.

Penalty on persons offering flour for sale, packed in unseasoned casks, &c.

SECT. III. And whereas the penalty of five shillings per day on bolters, millers and bakers, for not entering their respective brands with the Clerk of the Quarter Sessions in the counties where they

1781. *reside, is considered as exorbitant and severe : Be it therefore enacted by the authority aforesaid, That the said penalty shall be thirty shillings for every such neglect, to be recovered as a debt under forty shillings, by any person that will sue for the same, on proof made that the said bolter, miller or baker has exercised his said employment in manufacturing flour or bread for exportation, for one month, without having made such entry.*

Penalty on
bolters, &c.
for not
entering
their respec-
tive brands.

Forfeiture,
in case of
deficiency
of weight.

SECT. IV. And whereas the forfeiture of the casks and their contents, in case of deficiency of weight, is considered as too severe, since accidental deficiencies may happen, where no fraud was intended : *Be it therefore enacted by the authority aforesaid, That in all cases where casks of flour are found deficient in weight upon trial and examination, agreeable to the directions of the act aforesaid, the person so offering such deficient cask or casks shall forfeit, for every pound so wanting in weight, the sum of nine-pence, to be paid into the hands of said inspector.*

Casks for
exportation
to be stamped
with the
letters S. P.

SECT. V. And whereas it has been found impracticable to brand all the casks of flour and bread offered for exportation with the arms of this state, agreeable to the directions contained in said act : *Be it enacted by the authority aforesaid, That the said inspector shall stamp the said casks, and the plugs (put into the holes made by the said inspector) with the letters S. P. And all casks with counterfeited stamps, as well as casks, the contents of which may have been changed after inspection, shall be liable to seizure and forfeiture, if offered for transportation out of this state.*

Middlings
for exporta-
tion to be
branded as
such.

SECT. VI. And whereas doubts have arisen whether middlings can be exported out of this state under the aforesaid law : *Be it therefore enacted by the authority aforesaid, That it shall and may be lawful to export middlings ; but every cask of middlings exported or offered for exportation, shall, besides and exclusive of the miller's common brands, be branded by the miller with the word MIDLINGS, at length, or be liable to seizure and forfeiture.*

Penalties
how to be
recovered.

SECT. VII. *And be it further enacted by the authority aforesaid, That all fines and penalties herein mentioned shall be recovered and applied, in manner and form, as is directed by this act, and the act to which this is a supplement.*

SECT. VIII. *And be it further enacted by the authority aforesaid, That so much of the fifth section of the above recited act, as imposes a fine of five shillings per day on bolters and millers for the neglect therein mentioned, and the clauses of forfeiture mentioned in the sixth section, and that part of the eleventh section which enjoins the branding casks with the arms of the state, shall be, and they hereby are, altered and repealed.*

Passed 28th December, 1731.—Recorded in Law Book No. I. page 466. (9)

(.) See the original act ante. vol. 1. (chap. 925,) and the note thereto subjoined.

CHAPTER DCCCCXLVIII.

An ACT for the better repairing and amending the banks, dams, ditches, sluices and flood-gates, on State-Island.

Passed 18th March, 1732—Private Act.—Recorded in Law Book No. 1. page 467.

CHAPTER DCCCCLII.

1782.

An ACT to amend an act, entitled “An Act for the better employment of the poor of the city of Philadelphia, the district of Southwark, the townships of Moyamensing, Passyunk, and the Northern Liberties,” and to revive and perpetuate an act, entitled “An Act for the relief of the poor,” and for repealing two other acts herein mentioned.

SECT. IX. **AND** whereas the act, entitled “An Act for the relief of the poor,” passed the ninth day of March, in the year one thousand seven hundred and seventy-one, hath been found by experience to be of great public utility :

SECT. X. *Be it further enacted by the authority aforesaid, That* the said act, and every article, clause, matter and thing, therein contained, is hereby revived, re-enacted, and made perpetual, except the clause limiting the continuance thereof, and such other parts thereof as are hereby altered, amended and supplied, or relate to the Mayor, Recorder and Aldermen of the city of Philadelphia, whose authority, jurisdiction and power, granted by the said act, shall be exercised by the Justices of the peace of the said city, or any three of them, agreeable to the directions of the act, passed the fourteenth day of March, in the year one thousand seven hundred and seventy-seven.

SECT. XII. *And be it further enacted by the authority aforesaid, That* so much of the act, entitled “An Act for the better employment of the poor of the city of Philadelphia, the district of Southwark, the townships of Moyamensing, Passyunk and Northern Liberties,” passed the eighth day of February, in the year one thousand seven hundred and sixty-six, as incorporates the township of Passyunk with the city of Philadelphia, the district of Southwark, and the townships of Moyamensing and Northern Liberties, is hereby repealed and made void.

Passed 25th March, 1782.—Recorded in Law Book No I. pa. 486. (r)

(r) The whole of this act, except 1803, (chap. 2357,) see ante. vol. 1. pa. the three sections here retained, is re- 346.
pealed by an act passed March 29th,

An act, passed in 1771, made perpetual. chap. 635,

The incorporation of Passyunk with Philadelphia, &c. annulled.

CHAPTER DCCCCLIII.

An ACT to vest certain powers in the President of this State, together with the other officers therein named, and for other purposes therein mentioned.

SECT. I. **WHEREAS** many delays have been occasioned in transacting the business of the Land-Office of this state, by reason of doubts which remained with the different officers, touching their power of determining many controversies on caveats, which stand undetermined on the books of said office, as well as a great variety of other cases touching escheats, warrants granted to agree, rights of pre-emption, promises, and other imperfect titles :

1782.

Board of
property in-
stituted, &c.
[See ante,
chap. 929.]

SECT. II. For remedy whereof, *Be it enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same,* That the President or Vice-President, and a member of the Supreme Executive Council, appointed by Council for that purpose, together with the Secretary of the Land-Office, the Receiver-General, and the Surveyor-General, for the time being, shall be a Board of Property, to hear and determine in all cases of controversy on caveats, in all matters of difficulty or irregularity, touching escheats, warrants on escheats, warrants to agree, rights of pre-emption, promises, imperfect titles, or otherwise, which heretofore have, or hereafter may arise, in transacting the business of the said Land-Office. And the Secretary of the Land-Office is hereby empowered and directed to receive and enter caveats in his said office, copies whereof to be transmitted to and entered in the Surveyor-General's office; and the said Secretary of the Land-Office shall, with the approbation and consent of the President or Vice-President, appoint days of hearing, and shall grant citations, at the reasonable request of any party or person applying for the same, or otherwise, as the case may require; for which said services they, the said officers of the Land-Office, shall take and receive such fees only as were customary at the former Board of Property.

Proviso.

SECT. III. *Provided always nevertheless,* That no determination of this Board of Property shall be deemed, taken or construed to extend, in any measure whatever, to the preventing either of the parties from bringing their action at the common law, either for the recovery of possession, or determining damages for waste or trespass, but the courts of law shall remain open to the said parties, in as full and ample manner, as if no determination had ever been given.

Further
time given
for payment
of purchase
money.
[See an act
passed Feb.
21st, 1810.]

[SECT. IV. And whereas it was enacted by the sixth and seventh sections of a law of this state, passed the ninth day of April last, entitled "An act for establishing a Land-Office, and for other purposes therein mentioned," that in cases where any office right, issued before the tenth day of December, one thousand seven hundred and seventy-six, had not been executed, that the owner or owners should make application within one year, and pay a third part of the purchase money to the Receiver-General, before any survey shall be made; and that all payments for lands taken up on any office right whatever shall be made, one fourth part in one year, another fourth part in two years, another fourth part in three years, and the residue in four years, from the passing of the said act; which respective times or periods are found, on experience and reflection, much too short for the purposes aforesaid: *Be it therefore enacted by the authority aforesaid,* That the said respective times and periods are enlarged, over and above the dates and times mentioned in said act, for the space of two years.]

SECT. V. And whereas it was enacted by the ninth section of the law aforesaid, that all lands within this state, heretofore surveyed under any grant, warrant, location, or other office right, shall be returned into the Surveyor-General's office (if not already returned) in the space of nine months after passing the said act, which

time is already expired, and it is found that very few have called on the late Deputy Surveyors for their draughts, or to discharge the fees due on the same, and a literal observance of the said act would involve not only the late Deputy Surveyors, but the owners of lands, in manifest loss and inconvenience: *Be it therefore enacted by the authority aforesaid*, That it shall and may be lawful for the Surveyor-General of this state to receive returns of such surveys, as shall appear to him to have been faithfully and regularly made, from the said late Deputy Surveyors, their heirs, or legal representatives, for such further period as to him shall seem just and reasonable. And that there shall no action, loss or damage, accrue to any person or persons, by reason of neglect in complying with the aforesaid clause or section before the passing of this act.

Surveyor General may allow further time for returns from deputies.

1782.

SECT. VII. And the aforesaid sixth, seventh and ninth sections of the law aforesaid, so far as respects the periods and times in the same respectively mentioned, and no further, are hereby altered and repealed.

Repeal of part of a former act.

Passed 5th April, 1782.—Recorded in Law Book No. 1, page 482. (s)

(s) By an act passed January 8th, 1791, (chap. 1511,) the Secretary of the Land-Office, the Receiver General, the Surveyor-General, and the Master of the Rolls, for the time being, or any three of them, were constituted a Board of Property; and the Secretary of the Land-Office is authorized to appoint days of hearing and grant citations, at the reasonable request of any person or persons applying for the same, or otherwise, as the case may require. This act was limited to the end of the next session of the legislature,—continued by chap. 1695, 2075.—Further continued for seven years, by an act passed February 6th, 1804; and the Board of Property, or any member thereof, authorized to administer oaths or affirmations to witnesses, and others, in all cases that may be necessary to the discharge of the duties of the Board, (chap. 2409.) An appeal from their decision, by suit within a limited period, in cases arising under the act of April 3d, 1792, (chap. 1613, sect. 11.)

By an act passed March 29th, 1809, the offices of Receiver-General and Master of the Rolls were abolished, and the Board of Property at present consists of the Secretary of the commonwealth, the Secretary of the Land-Office, and the Surveyor General, or any two of them, who possess by this act all the powers of the former Board.

For the duties enjoined on the Board of Property, from time to time, by various acts, see the title "Board of Property," in the General Index to this edition.

The fees on issuing warrants and patents are regulated by the above-men-

tioned act of March 29th, 1809, amended by a supplement, passed Dec'r 25th, 1809.

Further time allowed for paying the purchase money, and patenting lands, by act of Feb'y 21st, 1810.

The judgment of the Board of Property cannot alter the nature of the title. The parties interested have a legal right to contest their decision by the express words of the act in the text. *Nisi Prius*, Ailegheny county, May, 1793. Before McKean, C. J. and Yeates, J. *Blaine's Lessee v. Crawford and Fore*, MSS. Reports.—It may be questioned at law in as full and ample manner as if no determination had ever been given. *Bell's Lessee v. Levers*, Northampton, June, 1800, Circuit Court, before Shippen, C. J. and Yeates, J. MSS. Rep.

In the case of *Hubley's Lessee v. Chew*, Northumberland, *Nisi Prius*, October, 1796, before Yeates and Smith, Justices. After the plaintiff had closed his evidence (which is not material to be noted upon the present subject) the defendant produced a special order of the Governor, dated August 10th, 1769, No. 3731, for 5000 acres of land, to be laid out and surveyed for Benjamin Chew, Esq. upon the head branches of Fishing creek, which runs into the north-east branch of Susquehanna, in one or more tracts, any where above the first forks, or upon the lake or lakes at the heads of the branches; and a survey thereon by Charles Stewart and Jesse Lukens, Deputy Surveyors, of 2254 acres and allowance, on 27th and 28th of October, 1773, and another survey, by the same deputies, in the same month, of 3753 acres, on Little Fishing creek

that on the 8th of July, 1776, *B. Chew* filed a *Caveat* in the office of the Surveyor-General, against the acceptance of any survey on the head branches or lakes of Fishing creek, above the first forks, by virtue of any location since the 10th of August, 1769.

It was further stated, that on the memorial of *B. Chew*, to the board of property, on the 30th September, 1791, they ordered the Surveyor-General to re-survey the first tract of 2254 acres, and denote the claims of any persons thereto. Whereupon William Montgomery, D. S. of the district made a re-survey thereof, leaving 401 acres and 97 perches free from dispute, (exclusive of some small pieces of land, of little value, amounting to about 400 acres, but of no value whatever, unless accompanied with the possession of the lands adjacent,) on the 15th of November following.

The testimony was excepted to by the plaintiff's counsel, who urged that the board of property had no jurisdiction in the premises. By the act of April 9th, 1781, (vol. 1, chap. 929,) the board was first instituted after the revolution, and consisted of the Secretary of the Land-Office, the Receiver-General and Surveyor-General. In the last section of that act it is declared, that nothing therein shall be construed to give validity to any warrant, grant or location for a greater quantity of land than 500 acres in one tract. A location was afterwards defined by the act of 25th of June, 1781, (ante. pa. 7, chap. 936,) to be "an application made for land in the office of the late Secretary of the Land-Office, entered in his books, numbered, and sent to the Surveyor-General's office." By the former act, therefore, the locations of this description were only validated, where they did not exceed 500 acres, and the jurisdiction of the board of property could not possibly reach to applications or grants of greater extent.

For the defendant it was insisted,

that the board of locations whereon *Caveats* had been duly made, did not originate in the act of April 9th, 1781, but in the present principles of substantial justice, and the act of 27th of November, 1779, (vol. 1, chap. 863.) By the defendant's construction thereof, which has met the approbation of the court, the rights of individuals to lands, as they stood on the 4th of July, 1776, are thereby firmly secured to them. By the law of April 5th, 1782, (act in the text) another board of property was constituted "to hear and determine in all cases of controversy on *Caveats*, in all matters of difficulty or irregularity, touching escheats, warrants on escheats, warrants to agree, rights of pre-emption, promises, imperfect titles, or otherwise." The formation of this board was again changed by the law of the 8th of January, 1791, (chap. 1511,) but their powers were continued as under the act of April 5th, 1782. The terms of that law are sufficiently comprehensive to reach the present case, and shew clearly the board's jurisdiction.

The court declared, that if there had not been such large and extensive words in the act of the 5th of April, 1782, "in all matters of difficulty or irregularity touching warrants to agree, rights of pre-emption, promises, imperfect titles, or otherwise," which unquestionably include the grant to *Mr. Chew*, the board of property must, of necessity, in order to prevent confusion and litigation, have possessed the powers contended for. The last section of the act of 9th of April, 1791, most probably arose from the jealousy had of the Proprietary's special grants to particular persons; but it can only refer to warrants, grants or locations *unexecuted*, where the parties have been guilty of laches and negligence in obtaining appropriations of vacant lands by actual surveys. Any other construction would effect manifest injustice. MSS. Reports.

The minutes of the board of property have uniformly been read to shew what passed before them. *Dougherty's Lessee v. Piper*. Circuit Court, Bedford, November, 1801, before *Yeates* and *Smith*, J. MSS. Reports.

CHAPTER DCCCCLV.

1782.

A SUPPLEMENT to an act, entitled "An Act for establishing Courts of Judicature in this province." (t)

SECT. IV. *AND be it further enacted by the authority aforesaid, That the provision made for the speedy relief of such defendant or defendants, as in and by the said recited act is or are mentioned, in the said several Courts of Common Pleas, shall be, and the same hereby is, extended to all such defendant or defendants in any suit or action, which shall hereafter be depending in the said Supreme Court of this commonwealth.*

Defendants in Supreme Court entitled to same benefits as defendants in Common Pleas.

SECT. V. *Provided always, That nothing in this act, or in the said recited act, contained, shall be construed, deemed or taken to bar or prevent any such plaintiff or defendant, upon reasonable cause shewn, from being allowed a convenient and sufficient time, under all the circumstances of his, her or their case, to procure such testimony as may be necessary for the support of his, her or their suit, action or defence.*

Time allowed to procure testimony.

Passed 10th April, 1782.—Recorded in Law Book No. I. page 489.

(t) By this act the benefit of having a special court, which was granted to defendants, by an act of the 22d of May, 1722, was extended to plaintiffs, but being so far repealed by an act of the 27th of March, 1789, (chap. 1402,) the only provisions that remained in the

law are expressed in the fourth and fifth sections.—For the original act see chap. 255, and for a general reference to the laws respecting the Judiciary, see the note there subjoined. (*Note to former edition.*)

CHAPTER DCCCCLVIII.

An ACT for erecting the town of Carlisle, in the county of Cumberland, into a borough; for regulating the buildings, preventing nuisances and encroachments on the commons, squares, streets, lanes and alleys of the same, and for other purposes therein mentioned.

[Printed at large, vol 2, folio, pa. 25, vol. 2, 8vo. pa. 333.]

SECT. III. **CARLISLE**, incorporated, and to be called "The borough of Carlisle," and the boundaries described. 4. Two Burgesses, one whereof to be called the Chief Burgess, and four Assistants, High Constable and Town-clerk, appointed, to continue until the next election. 5. Made a body corporate, with the usual powers, by the name of "The Burgesses and Inhabitants of the borough of Carlisle." 6. The election of borough officers to be, annually, on the first day of May, by the Burgesses, Constable, Assistants and Freeholders, with such inhabitants, house-keepers within the said borough, as shall have resided therein at least for the space of one whole year next preceding any election, and

1782.

hired a house and ground within the said borough, of the yearly value of five pounds or upwards. The election to be held by the High Constable of the year preceding, who shall certify the names, &c. within fifteen days afterwards, under his seal to the President of Council. And in case of no election being had, the President in Council shall appoint until the next time of annual election, &c.

7. The powers of the Burgesses defined, (but so far as they are declared to be Justices of the peace, this section is repealed by an act passed 13th September, 1785, chap. 1168, and by the existing constitution.) 8. To take and subscribe a certain oath or affirmation. 9. Authorized to hold markets and fairs, a Clerk of the market to be appointed. 10. Fines imposed on borough officers refusing to serve. 11. Power to make rules and ordinances for the government of the borough, not inconsistent with the constitution. 12. Buildings heretofore erected, encroaching, &c. not to be deemed nuisances, but not to be rebuilt. 13. No foundation of any party wall, &c. to be laid by any person before applying to the regulators, who are to be appointed by the Burgesses, &c. 14. Penalty on laying the foundation of a party wall before view by the regulators. 15. Appeal allowed to the next Sessions by party aggrieved. 16. Pay of the regulators. 17. Their power to regulate party fences, &c. 18. Supervisors and Assessors to be chosen on the third Saturday in March, annually, by persons qualified to choose Burgesses, &c. and the penalty for refusing to serve. 19. Five days notice of the election of them, by the supervisors of the highways. 20. Supervisors and Assessors to lay a tax, first taking a prescribed oath or affirmation, to be administered by one of the Burgesses, or any Justice of the peace of the county. 21. Supervisors or assessors, dying, refusing, or neglecting to serve, the Burgesses to appoint others; and their pay fixed. 22. The tax, before collection, to be allowed by the Burgesses, or one of them, and one or more Justices of the county, and the proceedings in case of refusal to pay, and on an appeal directed. 23. Goods of tenants may be distrained for the tax. But, 24. They may deduct it out of their rent, or recover it by action. 25. Supervisors to repair the streets, &c. 26. And may enter on lands adjoining to cut drains or ditches for carrying off the water, &c. 27. Penalty on Supervisors for neglect of duty, with appeal, if aggrieved. 28. Supervisors to produce fair and just accounts to the Burgesses, &c. who are to settle and adjust the same, with appeal to the next Sessions, if aggrieved. 29. The borough of Carlisle declared to be one distinct district for general elections. 30. Justices residing within the borough empowered to act in all matters appertaining to their office, notwithstanding they are chargeable to the rates, &c. 31. Except on determining on appeals to the Sessions, (this section now obsolete.) 32. Penalty on persons casting dirt, earth, &c. from their improvements into any public street and not removing the same. 33. And for laying shavings, ashes, dung, &c. on any pavement. 34. Or casting rubbish in any public street. 35. On Distillers discharging nauseous liquor, so as to run through the streets. 36. On leaving carrion on any uninclosed grounds, within the borough,

without covering, &c. 37. On obstructing the common sewers. 38. 1782.
 On making any pavement or footway contrary to the directions of
 the regulators. 39. Regulations relating to encroachments by cellar
 doors, &c. 40. Owners of porches, &c. exceeding the limited re-
 gulations, to be assessed, till they are reduced, or taken away. 41.
 Penalty on persons removing, or damaging pipes or trunks for con-
 veying water, &c. 42. No person to keep more than 25lb. of
 gunpowder in their houses, &c. 43. Buildings erected on the com-
 mons declared nuisances. 44. Penalty on doing so after publication
 of this act. 45. Penalty on persons digging holes, &c. on the com-
 mons. 46. Manner prescribed for recovering and applying fines.
 47. The act relating to public roads and highways not to extend to
 the borough. 48. Persons sued for any thing done in pursuance of
 this act, may plead the general issue, &c.

Passed April 15th, 1782.—Recorded in Law Book No. I. page 493.


CHAPTER DCCCCLIX.

*An ACT for methodizing the department of accounts of this commonwealth,
 and for the more effectual settlement of the same.*

SECT. I. WHEREAS the methods heretofore practised for
 the settlement of the accounts of this state have, by experience,
 been found not to answer the good purposes intended thereby : For
 remedy whereof, *Be it enacted by the Representatives of the Free-*
men of the commonwealth of Pennsylvania, in General Assembly met,
and by the authority of the same, That an office shall be instituted in
 this commonwealth, for auditing, liquidating and adjusting all the
 accounts thereof, and that the same shall be established and kept at
 the place where the General Assembly of the state shall hold their
 sessions, to be styled “ The Comptroller-General’s office ;” and that
 a person of known integrity, diligence and capacity, be appointed,
 to execute and perform the duties of said office, by the name of
 “ The Comptroller-General,” who shall be, and hereby is, author-
 ized and empowered to liquidate and settle, according to law and
 equity, all claims against the commonwealth, for services perform-
 ed, monies advanced, or articles furnished, by order of the legisla-
 tive or executive powers, for the use of the same, or for any other
 purpose whatever ; to inspect and examine all vouchers which shall
 be produced in support of such accounts or claims, and in all cases
 of doubt or difficulty to call upon witnesses, examine them on oath
 or affirmation, touching any charge or account, which it may be pro-
 bable their evidence would tend to elucidate or explain ; which oath
 or affirmation the said Comptroller-General is hereby authorized
 and empowered to administer ; to judge of prices and charges, in all
 cases wherein such prices or charges have not been ascertained and
 fixed, by persons duly authorized to ascertain and fix the same ; and,
 generally, to call upon all persons, or their representatives, who
 have been or shall be possessed of any monies, goods or effects, be-

Office for au-
 diting, &c.
 the accounts
 of the com-
 monwealth
 instituted.

Style of the
 officer, and
 his jurisdic-
 tion.

1782.  longing to this state, and have not severally accounted for the same, other than and except the collectors of public taxes, and the treasurers of the different counties; and to keep fair, distinct and clear accounts of all the revenues and expenditures of the commonwealth, of every kind and nature whatsoever.

All public accounts to be rendered, in to the said office, and, when settled, transmitted to the Executive.

Proceedings thereon.

Warrants to be entered.

Balances due to the state to be recovered.

SECT. II. *And be it further enacted by the authority aforesaid,* That from and after the first day of May next, all accounts between this state and any officer of the same, and all and every other person or persons (except as before excepted,) shall be rendered into the said office in the first instance, where they shall without delay be liquidated, adjusted and settled: and upon settlement of any such account, the same shall be transmitted, together with the vouchers thereto belonging, to the President and Council, who, if satisfied with the justice of such settlement, shall, by warrant drawn on the Treasurer of the state, direct the payment of any balance, which may appear to be due thereupon, to the party entitled to receive the same: and the President and Council shall, by their Secretary, return the same accounts and vouchers into the said office, together with such warrant; and the said Comptroller-General shall make an entry in his books of such warrant, and, having certified the same on the back thereof, shall forthwith deliver it to the party entitled to receive such balance, and shall carefully file and deposit all such accounts and vouchers in his office; and if upon any settlement a balance shall be found due to the state, the account and vouchers shall be filed in the said office, in like manner as afore directed, and the said Comptroller-General shall forthwith take the most effectual steps for the speedy recovery of the same.

SECT. III. *And whereas many accounts of long standing are still unsettled, or have not been finally closed, and large sums of money or considerable effects, belonging to the commonwealth, remain in the hands of divers persons, and the same will probably be lost, if vigorous measures be not taken to compel such persons to settle their accounts, and discharge the balances which may appear to be due to the state:*

Comptroller-General to form abstracts of the names, &c. of persons, who have received money from the commonwealth, &c.

SECT. IV. *Be it therefore enacted by the authority aforesaid,* That the Comptroller-General shall, with all convenient speed, form abstracts or lists of the names and surnames, additions and places of abode, of all persons who shall have received monies, effects or property of this commonwealth into their hands, which they have not accounted for, and of the value or amount received by each person, as well as the dates of the several transactions; for which purpose he shall be, and hereby is, authorized and empowered to call for all the books and papers, accounts and vouchers, appertaining to or belonging to the state, which shall be in possession of the auditors heretofore appointed, or in the hands of any other person or persons whatever.

And to direct the Prothonotary of the county to issue process, &c.

SECT. V. *And be it further enacted by the authority aforesaid,* That the said Comptroller-General shall, with all dispatch, direct the Prothonotary of the county, wherein the person or persons whose names shall be contained in such abstract be resident, or in which

they had their last known abode, to issue process, commanding the Sheriff or Coroner of the said county to summon such person or persons to appear, within three months, in the Comptroller's office, and there exhibit and settle their accounts, and pay all sums of money belonging to the state, of which they shall respectively be found possessed; whereupon such Sheriff or other officer shall serve a copy of such summons upon the party or parties aforesaid, at least thirty days before the end of the term last mentioned, and shall make proper return of every such summons, within twenty days after such service, to the Prothonotary, upon oath; and if such person or persons, whose name or names shall be contained in such summons, are not found within the county, the Sheriff or Coroner of the same shall proceed to demand and call, in an audible public manner, upon such person or persons, in open Quarter Sessions of the peace, to appear as aforesaid, and settle his, her or their accounts, and pay over to the Treasurer of the state all monies belonging to the state, which they severally possess and detain in their hands respectively.

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SECT. VI. *And be it further enacted by the authority aforesaid,* That if any person or persons, who shall be summoned, or demanded, and called upon, as aforesaid, shall refuse or neglect to exhibit their accounts as aforesaid, within three months after the service of such summons, every and all such delinquent or delinquents shall be liable to answer for and pay to the Treasurer of the state the amount of the monies, or the full value of all public effects, which shall appear to the Comptroller-General to have been received or come to the hands or possession of such person or persons respectively, without any allowance, deduction or set-off whatsoever.

Persons neglecting or refusing to exhibit their accounts, liable to pay the full value, &c.

SECT. VII. *And be it further enacted by the authority aforesaid,* That if any auditor or auditors, person or persons aforesaid, having in his or their possession any of the public books or papers, accounts or vouchers, herein before mentioned, shall refuse or neglect, within ten days after demand made by the said Comptroller-General, to deliver up to him, on oath, all and every the books, papers, accounts or vouchers aforesaid, all and every such auditor or auditors, person or persons, so offending against this act, shall be proceeded against by the Comptroller, and shall forfeit and pay any sum not exceeding one thousand pounds, to the use of the state to be recovered, on conviction, in any court of record within the same.

Penalty on persons refusing to deliver up public books or papers, &c.

SECT. VIII. *And be it further enacted by the authority aforesaid,* That in case any person shall be found to have a balance in his or her hands, due to the state, and shall, on order from the Comptroller-General, refuse or neglect to pay the same, as before directed, and in case any person who shall be summoned, or demanded, and called upon, in open Quarter Sessions of the proper county, shall not exhibit his or her accounts, and procure the same to be settled, according to the directions of this act, all and every such person shall be liable to be taken and imprisoned in any county gaol, by warrant, under the hand and seal of the Prothonotary of said county, or his or her goods and chattels shall be distrained and sold, af-

Method of recovering balances due to the state.

1782. ter thirty days from such distraining, by warrant, under the hand and seal of said Prothonotary, to satisfy such balance, or such value or sum, certified as aforesaid, together with costs and charges; and if other property cannot be found, the lands and houses of the delinquent may be taken and sold by the Sheriff of the county, so far as may be necessary for the purposes aforesaid, by virtue of a writ of *Fieri Facias*, to be issued by the Prothonotary of the county where such real estate lieth, upon a certificate of the debt due to the state from the Comptroller being filed with such Prothonotary.

Monies recovered to be paid to the State-Treasurer.

SECT. IX. *And be it further enacted by the authority aforesaid,* That the money so recovered shall be paid, by the Sheriff or Coroner who shall receive the same, into the hands of the Treasurer of the state, for the use of the state, within thirty days after such recovery.

No accounts to be deemed settled, until audited by the Comptroller.

SECT. X. *And be it further enacted by the authority aforesaid,* That no account whatever, between the commonwealth and any public officer, or other person whatsoever, except as before excepted, shall be deemed to be settled, and the party exonerated from settling and supporting the same in the manner required by this act, until the same shall be audited, liquidated, and settled in the office of the Comptroller-General, erected by this act: other than and except all such accounts, as have been settled by auditors or commissioners heretofore appointed for the purpose, or by the committees of Assembly.

Proviso, that errors in Revised accounts be reported to the legislature.

SECT. XI. *Provided nevertheless, and be it further enacted by the authority aforesaid,* That the said Comptroller-General shall be, and is hereby, authorized and empowered to examine, revise and correct, all and every the account or accounts settled by the auditors, commissioners, or committees of Assembly aforesaid, and shall report all substantial errors or omissions, which he may discover, to the General Assembly of this commonwealth, who shall finally determine thereon, either by directing a re-settlement of such accounts with the said Comptroller-General, or by confirming the same.

Comptroller may summon witnesses.

SECT. XII. *Be it further enacted by the authority aforesaid,* That it shall and may be lawful for the said Comptroller-General as often as there shall be occasion, to call before him, by subpoena, or summons, and in case of contempt to issue a writ of attachment, in order to compel the appearance of any person or persons, who the said Comptroller-General may reasonably suppose is or are capable of giving evidence or information concerning the said accounts, or any of them; and in case any person or persons, on whom such subpoena or summons shall be served, shall refuse to appear, as in such writ shall be expressed and directed, or, having appeared, shall refuse to make a full disclosure of his, her or their knowledge in the matter depending before the said Comptroller-General, the said Comptroller-General may award an attachment, and commit such delinquent or delinquents to the common gaol of the county, there to be holden, till such person or persons shall submit to the said Comptroller-General, and comply with the directions of this act;

Penalty on persons refusing to appear, &c.

and all persons who shall be summoned as witnesses by the said Comptroller-General, and every Sheriff, Coroner or other officer, to whom he shall direct his precepts or writs, shall be allowed like fees for their attendance and services, as witnesses summoned to appear in the inferior courts of justice, and Sheriffs, Coroners and other officers are entitled to in such courts: such costs, together with further charges accruing, to be levied on the several delinquents by the said Comptroller-General, by warrant, in like manner as small debts are recoverable.

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Allowance to witnesses, &c. for attendance.

SECT. XIII. *Provided always, and be it further enacted by the authority aforesaid,* That if, upon any subpoena or summons requiring the attendance of any person or persons before the said Comptroller-General, as aforesaid, a return be made that such person is not to be found within the proper county, that the said Comptroller-General may issue an attachment, and proceed thereon as aforesaid, as if such subpoena or summons had been duly served.

Proviso, in case persons summoned are not found.

SECT. XIV. *And be it further enacted by the authority aforesaid,* That the Secretary of the Supreme Executive Council shall be, and he is hereby, required and enjoined, once in every month, to enter in the Comptroller-General's office all and every marriage and tavern or other licence, noting how many of said licences have been paid for, and the sums so paid; and also what number of blank licences have been granted, either for marriages or taverns, not paid for, and to whom granted; and the said Comptroller-General shall cause fair entries to be made of all such sums of money so received by the Secretary, and also of all such licences as have been so granted to the several Prothonotaries and others, and have not been paid for; and shall open an account against all such Prothonotaries or other persons, for the amount of such licences; and the said Prothonotaries and others, at least once in three months, shall settle their respective accounts with the Comptroller-General, in which the Treasurer's receipts, and the blank licences which may at such time be unused and produced to the said Comptroller, shall be received and accepted by him as the only sufficient vouchers in such settlement.

Secretary of the Council to enter all licences monthly, in the Comptroller's office;

and the Comptroller shall debit the respective Prothonotaries therewith.

Mode of accounting for them declared.

SECT. XV. *And be it further enacted by the authority aforesaid,* That the Comptroller-General shall particularly attend to such parts of the accounts already settled, or that may hereafter be settled, as are properly a charge against the United States, and, selecting such parts with great precision, institute an account between the United States and the commonwealth, in forming which he shall regulate himself by the resolution of Congress authorizing such charges, and by the accounts raised against the commonwealth in the books of the department of the treasury of the United States; and where any charge shall appear to him to be of a federal nature, although such charge shall not be expressly acknowledged by Congress, he shall open a separate account for the same, to be finally settled on such principles as may hereafter be established by Congress, and agreed to by this commonwealth.

Comptroller to select such parts of accounts as are properly chargeable against the United States, &c.

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State Treasurer not to sue or pay any monies without a warrant from the Executive, entered and certified by the Comptroller. Cases excepted.

SECT. XVI. *And be it further enacted by the authority aforesaid,* That the Treasurer of this state shall not from and after the first day of May next, issue or pay any of the public monies which have come or shall come to his hands without a warrant for so doing, signed by the President or Vice-President in Council, and entered in the Comptroller-General's office, such entry to be certified on such warrant by the said Comptroller-General, other than and except the monies appropriated to the use of the United States for the current year, which shall remain subject to the orders of the Superintendent of the finances of the United States, and the wages and incidental expenses of the House of Assembly, which shall be paid on warrants drawn by the Speaker in Assembly, any law, custom or usage, to the contrary in any wise notwithstanding. *Provided always,* That such orders or warrants, drawn by the Superintendent of the finances or Speaker, for the purposes aforesaid, be first entered and certified in the Comptroller-General's office, as before directed.

Comptroller's books, &c. shall be open to the inspection of the committee of accounts, and copies shall be furnished the Executive.

SECT. XVII. *And be it further enacted by the authority aforesaid,* That the books, papers and transactions of the office of the Comptroller-General shall be open to the inspection and examination of the committees of accounts, who shall be empowered by the Assembly of this state for the time being, or Executive Council; and the said Comptroller-General shall be obliged to furnish annually, and at all other times, a state or abstract of the public accounts, or any of them, to the legislative and Supreme Executive powers of the state, when he shall be thereunto required by either of them.

Comptroller's salary.

SECT. XVIII. *And be it further enacted by the authority aforesaid,* That the salary of the Comptroller-General shall be the sum of five hundred pounds per annum payable in quarterly payments, by warrant drawn on the Treasurer for that purpose by the President or Vice-President in Council.

Comptroller to give security,

SECT. XIX. *And be it further enacted by the authority aforesaid,* That the said Comptroller-General shall, before he enters on the duties of the said office, give bond, with one or more sufficient sureties, in the sum of five thousand pounds, to the President or Vice-President in Council, for the faithful performance of the duties of his office, and shall likewise take and subscribe the following oath or affirmation: to wit, "I do swear, or affirm, that I will faithfully execute the office of Comptroller-General for the commonwealth of Pennsylvania, and will do equal right and justice to all men, to the best of my judgment and abilities, according to law and equity."

and qualify.

Former laws repealed.

SECT. XX. *And be it further enacted by the authority aforesaid,* That the act of Assembly of this commonwealth, entitled, "An Act to compel the settlement of public accounts," passed on the first day of March, one thousand seven hundred and eighty, and a supplement to the said act, passed on the thirtieth day of May, in the same year, as likewise all and every the act or acts of the Assemblies of this commonwealth heretofore passed, for regulating or settling

the accounts of the same, of every kind or nature whatsoever, shall, 1782.
from and after the passing of this act, be, and the said acts are hereby, repealed and declared void.

[SECT. XXI. *And be it further enacted by the authority aforesaid,* That this act shall be publicly read in every court of Oyer and Terminer, and of the Quarter Sessions of the peace, which shall be holden in this state, between the first day of May and the first day January next, during which all other business shall cease.]

[SECT. XXII. *And be it further enacted by the authority aforesaid,* That John Nicholson be, and he is hereby, appointed Comptroller-General for the time being.]

This act to be publicly read in the courts.
[Obsolete.]

Officer appointed.
[repealed.]

Passed 13th April, 1782.—Recorded in Law Book No. 1. page 508. (u)

(u) It will be obvious to the reader, that many of the powers given to, and the duties enjoined on, the Comptroller-General, from time to time, by various acts, are now extinct. The office itself is now abolished, but many of the powers and regulations of this act remain, and are vested in, and govern the State Treasurer, and Auditor-General. It must therefore give satisfaction to review the whole subject, and to bring together all the important acts which have been passed relative to the public accounts, since the year 1782, to the present period.

By the 8th section of an act passed April 13th, 1782, (chap. 960.) for settling and adjusting the depreciation of the pay accounts of sundry officers, &c. The Comptroller-General was directed to settle the depreciation of the pay accounts of the several officers and men included in the act.

And by an act passed September 20th, 1782, (chap. 977,) to extend the powers of the Comptroller-General of this commonwealth; that officer was directed to execute the duties of the Auditors, under the acts of December 18th, 1780, (chap. 909,) and October 1st, 1781, (chap. 944,) in settling the depreciation of pay of the troops of this state, as far as the same had not been performed by the Auditors, and his certificates were to have the like effect as if signed by the Auditors, and rest upon the same funds, by reason of the office of Auditors having been abolished by the act in the text. But these acts and the duties under them are now extinct and obsolete.

So, by an act, entitled "an Act to enable the Comptroller-General to issue certificates for the balances due on the accounts of the late Ranging Company, raised for the defence of the frontiers, and other accounts due to the citizens of this State," passed April 1st, 1784,

(chap. 1089.) It was enacted, that upon liquidation of the several accounts of the officers, soldiers and citizens of this state, the Comptroller-General should grant certificates to each and every of them, for the balance due to them respectively, in specie, which certificates carried interest, at six per cent. from July 1st, 1783, and were transferable as promissory notes; these certificates, by the third section of the act were receivable as specie in payment for the purchase money of lands, &c.

And by "An act for the relief of such persons as have debts due to them from the estates of persons attainted of treason, and confiscated in the late war, &c." passed March 30th, 1785, (chap. 1138,) the Comptroller-General was authorized to issue certificates for claims against forfeited estates, as decreed by the Judges of the Supreme Court, according to law, and to calculate interest upon all such claims as should be decreed with interest, upon the principal sums to the first day of July, 1783; at which period the interest was to commence upon the certificates to be granted, and the same to be consolidated with the principal aforesaid. But where bonds, or other claims should not have been decreed to become due, with interest, until some time posterior to the date last mentioned, the interest to be calculated upon, and discounted from such debts, from and after the said first day of July.

Certificates were not to issue for a greater than the specie value of the neat proceeds of the sales of such estates, which the Comptroller-General was directed to ascertain before he issued any certificates, and where the demands of creditors exceeded such value, to lay the same before the Judges of the Supreme Court, who were to decide, according to law and equity, in

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what manner, and what proportion, the debts should be paid out of the assets given, having respect to mortgages, bonds with judgment, obligations, and common book debts.

Citizens of neighbouring states, who had balances due by this state, upon the settlement of their several accounts, were respectively entitled to receive certificates, in like manner as citizens of this state, agreeable to the act of April 1st, 1784.

By an act of March 1st, 1786, (chap. 1191,) the interest on the certificates issued in pursuance of the above acts, was directed to be paid half-yearly; a previous provision having been made for the annual payment of interest by the treasurer, by an act of March 16th, 1785, (chap. 1126,) and provision was made for the redemption of the public debt, by the act of April 10th, 1792, (chap. 1635.)

By an act passed April 4th, 1805, (chap. 2611,) the certificates of state debt, depreciation certificates and the bills of credit issued under the acts of 1781 and 1785, are declared to be irredeemable after a limited time, now past. And see chap. 1642, passed Feb'y 9th, 1793, and chap. 1764, passed April 22d, 1794.—So that all the duties specified under any of the acts above cited, are now become obsolete; the acts having no longer any operation.

On the 18th of Feb'y 1785, an act was passed (chap. 1122,) entitled "An act to give the benefit of trial by jury to the public officers of this state, and to other persons, who shall be proceeded against in a summary manner by the Comptroller-General of this state."

By this act, an appeal was allowed to the Supreme Court from the settlement of accounts by the Comptroller-General, after the settlement had been transmitted to the Executive Council for their approbation. The appeal to be within one month after notice given to the party, that the settlement was approved of by the Council, but not afterwards; and the appeal was to be allowed by the Executive Council, provided the party entered sufficient security with a judge of the Supreme Court, or before the President of the Common Pleas of Philadelphia, within ten days after such appeal, to prosecute it with effect, pay all costs and charges the Supreme Court should award, and any sum of money which should appear by the judgment of the said Court to be due to the commonwealth, or surrender, as prisoner to the sheriff of the county.

But, in case of proceedings against any person in pursuance of the act in

the text, if, upon summons and demand made, he should refuse or neglect to exhibit his accounts to the Comptroller-General, as directed by the act, the settlement is declared to be final, and the party is deprived of his appeal.

On an appeal, the Supreme Court was to direct the form of proceedings, and, if necessary, direct the Attorney-General to appear and plead thereto, on behalf of the commonwealth; but not to allow of any plea to a declaration filed by the Attorney-General upon any matter, other than the general issue, unless verified by the affidavit of the defendant; nor any demurrer to such declaration for want of form; but that it should be sufficient in all actions on the case, or upon account, to allege that the defendant was indebted to the commonwealth for money had and received, &c. and that payment thereof hath not been made.

If the Supreme Executive Council was dissatisfied with the settlement of any account by the Comptroller-General, in pursuance of any act, or be of opinion that a legal discussion of the same would tend to a furtherance of justice, they were authorized to direct the Attorney-General to institute a suit against the party, with whose account they were dissatisfied, in the Supreme Court, by writ of *capias ad respondendum*, wherein like proceedings should be had as in civil actions instituted in the Courts of Common Pleas of the counties of this state.

Upon any appeal, or suit directed as aforesaid for the re-settlement of any account, it was made the duty of the Executive Council, to send to the Supreme Court a transcript of the whole account in controversy, settled by the Comptroller-General, and approved or rejected by them, within the two first days of the next term after the appeal made. And in case it should appear by such transcript, that the party is indebted to the commonwealth, the Attorney-General to file a declaration *instantur* for money had and received, &c. to which the party shall plead the general issue, without any imparlance, and issue being joined, the court is to award a *venire* returnable at the same or any future term, in their discretion, for the trial of the said issue, and a verdict in favour of the commonwealth found and confirmed, to be final and conclusive, and execution to issue accordingly; and no appeal or writ of error to lie upon the said judgment. But if a balance should be found due to the party from the commonwealth, and the court should confirm the verdict, then the judges were to certify the same to the Execu-

tive Council, with the amount of costs, who were to grant an order for payment, &c.

Depositions may be taken, at the costs of the party applying, of witnesses residing out of Philadelphia, Bucks, Chester, or Montgomery counties, by rule of court. And if the Supreme Court should be of opinion that the trial ought to be in the county where the cause of action arose, they might direct it to be at *Nisi Prius*, or in the Court of Common Pleas of such county, which court was authorized to preside at such trial, and to certify the verdict given by the jury, to the Supreme Court, that judgment might be entered accordingly.

The Comptroller-General was also authorized to revise his own settlements which shall not have been appealed from, or any issues tried, and on discovery of errors, to proceed anew thereon, to do justice to the commonwealth or the party, and his award in such case to be of like effect as in the original settlements, provided such error be discovered within one year from the passing of the act, and in future settlements within one year after his award, in any case laid before the Executive Council; after which times respectively, the said settlements and awards should not be again opened or questioned, but the party, his heirs, executors or administrators should be forever quieted touching the same.

The settlements of the Comptroller-General and confirmation by the Supreme Executive Council, in case of a balance due from any person to the commonwealth is declared to be a lien on all the real estate of such person throughout the state, in the same manner as a judgment for debt given against such person in the Supreme Court; and if upon appeal, the settlement is confirmed, the court shall award interest thereon from the date of the confirmation by the Executive Council, and costs to be paid by the appellant.

It is further provided, that in any action instituted in pursuance of this act, or upon any issue formed between the commonwealth and any person, for whom or against whom, the Comptroller-General shall have awarded balances, the court, with the consent of the Attorney-General, and party, may appoint referees, whose report, if confirmed by the court, shall have like effect, and there shall be the like proceedings, as in case of a verdict of a jury, and judgment given thereon accordingly.

Such are the outlines of this important act, the principles of which remain in force, though in the form and

manner considerable alterations have taken place, as will hereafter appear in this note, by subsequent laws.

For the sake of the connexion of the subject, however, it may not be improper to state here, that with respect to the appeal, it is provided by the act making a new arrangement in the treasury department, passed March 17th, 1809, That if any individual shall think himself aggrieved by any settlement made by the accounting officers, he shall have the like remedy of an appeal under the same circumstances, as if the settlement had been made under the existing laws by the Comptroller and Register General. And in case of any appeal, such appeals shall be forthwith transmitted by the Auditor-General to the Prothonotary of the Court of Common Pleas of the county in which the seat of government is or may be, there to be tried and determined, subject nevertheless to a further appeal to the court in bank of the proper district.

The appeal allowed by the act of Feb'y, 1785, was extended to the case of accounts that had been settled before it was passed, by an act passed August 26th, 1786, (chap. 1219,) provided the appeal was made within one year after that time. But this act is entirely obsolete.

An act was passed April 4th, 1785, (chap. 1147, now obsolete) among other things, to secure the independency of the Comptroller-General, by a commission for seven years, and a permanent salary, upon condition of his good behaviour only; and the appointment vested in the Executive Council, and his salary fixed at £.800.

The Register-General's office was established by an act passed March 28th, 1789, (chap. 1412,) and a salary of £.500 *per annum* appropriated for that officer, who was to be appointed by the General Assembly.

The Comptroller-General was enjoined and required to submit all accounts thereafter to be adjusted between this commonwealth and the United States, or any one or more states, or any one or more individuals, before he should finally settle the same, in pursuance of any laws in force, to the inspection and examination of the said Register-General, and to take his advice and assistance in making such settlements; and every statement and settlement of any public account by the Comptroller-General so made with the aid and assistance of the Register-General, was to be laid before the Supreme Executive Council, in the same manner, and for

1782. the same purposes, as were provided as to accounts settled by the Comptroller-General.

The Register-General was enjoined and required to provide suitable books, and therein open a fair set of accounts with and for all and every person and persons, and bodies politic whatsoever, with whom any accounts then were, or thereafter should be depending with the state, or who had, or should receive any public monies belonging to the state; and to transfer to such accounts all balances appearing to be due from any person, or body politic, at the time of passing this act; and where any account could not be finally settled and balanced up to the said time, so much thereof as could be settled or ascertained, was to be transferred to and entered in such books, and the residue brought forward and entered therein, so soon as the same could be ascertained with the aid of the Register-General.

All warrants and orders to be drawn and issued by the Executive Council, or General Assembly, thereafter, for any public monies which they respectively, by law, had any right to draw and issue, were directed to be carried to the office of the Register-General, to be countersigned by him, and entered in the proper accounts, to which they were respectively chargeable, before the same should be allowed or charged to the public in the office of the Comptroller-General.

The Register-General was further required, as often as he should be directed by the Executive Council, to inspect and examine all such part and parts of the transactions of the Comptroller-General, as the Council should judge necessary and proper, and to make fair and just reports thereof to them, for their information.

John Donaldson, was, by this act, appointed Register-General; and the act of April 4th, 1785, so far as it authorized the appointment of the Comptroller-General for seven years, was repealed, and it was provided, that that officer should hold his office during the pleasure of the Executive Council.

By a supplement to the act last noted, passed September 30th, 1789, (chap. 1452,) it was made the duty of the Comptroller-General to state and adjust, and strike the balance of all accounts between this commonwealth and the United States, or any one or more states, or any one or more individuals, or bodies corporate, and to examine the vouchers for all debits and credits therein contained, and to report his opinion

thereon, together with the vouchers thereof, and to take the advice and assistance of the Register-General in settling the same, before the final allowance thereof, and, after such settlement and allowance, the same was to be laid before the Executive Council, in the manner, and for the purposes mentioned in the original act.

He was, moreover, forthwith, to furnish the Register-General with an account of all balances which, on the 28th day of March preceding, were due to or from any person or persons, or bodies politic with whom accounts were then depending with the state, and to submit to the examination of the said Register-General, his books, containing all entries having relation thereto, and such papers, accounts, documents, and vouchers, as should be necessary and sufficient to prove the justice of such balances, that the Register-General might be enabled to open the accounts in his books.

Likewise, to furnish the Register-General with an exact account of all the continental and new loan certificates which, under the act for that purpose, had been exchanged for each other, containing the dates, numbers, sums, names of the persons in whose favour they had been issued, the amount of interest paid thereon, with such other particulars as the case should require, and of the payments or receipts of interests for equalizing the balance of interest respectively due thereon, together with the vouchers to support the same; and upon all applications hereafter to be made for the exchange of such certificates, before the exchange should be made, to furnish the Register-General an account of each certificate offered, and of the certificate or certificates intended to be given in exchange of the interest due to and from the state thereupon, and the Register-General, after examination and approbation of such certificates and accounts, was to cause the same to be registered in his books accordingly.

He was directed, also, to furnish to the Register-General a just account, supported by vouchers, of all the certificates he had granted, since the 28th day of March preceding, to any person or body politic for any debt due from the commonwealth; and, after passing this supplement, before he granted any certificate for any debt due from the commonwealth, to submit the accounts and vouchers of such debts, not already examined by the Register-General, together with the certificates intended to be granted for the same, to the exami-

nation and approbation of the Register-General, who was directed, thereupon, to cause the same to be registered, and to endorse the registry thereof on such certificates.

The State-Treasurer was enjoined and required to furnish to the Register-General, every month, an account of all monies received by him for the use of the commonwealth, and of all interest paid by him upon any securities of the commonwealth, during the preceding month; and the Register-General was directed to transfer all such receipts and payments to the proper accounts in his books.

The Register-General was enjoined and required to prepare a general statement of all the accounts of the commonwealth, ending on the 30th of September in every year, on or before the twenty first day of October following, and to lay the same before the General Assembly, within the first week after they shall have convened, in the first session of every year, and additional statements as often afterwards, in the course of each year, as the Assembly should order and direct; and that he should at all times submit his books to the inspection of the General Assembly and Executive Council, or either of them, and of any committee of them, or either of them, appointed to view the same.

The Comptroller-General was directed to examine the certificates granted by the Orphans' Court, under the act to provide for the more effectual relief of the widows and children of the officers and privates of the militia who have lost their lives in the service of their country, passed March 27th, 1790, (chap. 1482,) and, if need be, to return them to the said court to be revised and corrected: and to cause all such certificates as should be by him examined and approved, to be registered in alphabetical order, and having first submitted them to the examination of the Register-General was to transmit them to the Executive Council, who were authorized to draw orders upon the State Treasurer for the payment thereof. (This is now the duty of the State Treasurer.)

By an act passed April 1, 1790, (chap. 1495,) entitled "An act to enforce the due collection of the revenues of the state, and for other purposes therein mentioned;" it was enacted, That, thereafter, all accounts of fees received by the Secretary of the Supreme Executive Council, Surveyor-General, Receiver-General, and Secretary of the Land-Office, all accounts of monies or certificates received by the Receiver-

General in payment for lands, &c. payable to the state; all accounts of monies received or to be received by the Prothonotary of the Supreme Court, or of the several Courts of Common Pleas, Clerk of the Mayor's Court, or of the several Courts of Quarter Sessions, or other officers, receiving or accountable for fines and forfeitures, marriage or tavern licences, or taxes upon legal process; and all accounts between the State and Collectors of Excise, County Treasurers and Auctioneers, should once in six months, or oftener, if there-to required by the State Treasurer, be rendered to him, who, without delay, was to examine, liquidate, and adjust the same; for which purpose he was authorized, by subpoena and attachment to call witnesses before him, and administer necessary oaths and affirmations; and every such account, so examined, liquidated, and adjusted, to transmit, together with the evidence and vouchers thereto belonging, to the Register-General, for his examination and approbation, who, if he approved thereof, was forthwith to transmit the same, with the vouchers, &c. to the President and Supreme Executive Council for their final approbation, who, having approved thereof, were to return the same, by their Secretary, to the Register-General, who was to cause the same to be registered, as directed by law in cases of accounts settled by the Comptroller-General; and to prevent error or fraud, the Register-General was directed to make upon each voucher, a mark or note of reference to the account to which it referred when produced by the Treasurer; and the said accounts, so approved and registered, to return, with the vouchers, to the Treasurer, who was, thereupon, either to give discharges, or to take legal and effectual measures to recover the monies due to the commonwealth.

The Treasurer was required to furnish to the Register-General the first of every month, an account of all monies received and paid by virtue of his office during the preceding month, who was to transfer all receipts and payments to the proper accounts in his books. The Treasurer to settle annually with the Register-General, &c.

All demands thereafter by individuals, or bodies politic, except the accounts before stated, and all accounts to be opened between the state and such bodies politic, or individuals, were in the first instance to be submitted to, examined, liquidated, and adjusted by the Register-General, who was vested, for that purpose, with like powers as

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were vested in the Comptroller-General, and after liquidation and adjustment, to be transmitted, with the vouchers and evidence, to the Comptroller-General, for his examination and approbation, who having examined and approved the same, and entered them, was, in like manner, to transmit them to the President and Council for final approbation, who, having approved thereof, were to return the same, by their Secretary, to the Register-General, to be by him registered, and carefully filed and deposited in his office.

All such settlements were to have the like force and effect, and be subject to the like appeal, at the instance of the party, as settlements theretofore made by the Comptroller-General.

The act then proceeded to direct in what manner continental certificates, received by the comptroller, were to be examined and arranged, and to be delivered to the Treasurer, who was to enter in proper books such as drew interest; and to receive the interest; and also directed the proceedings where certificates, other than those received on loan, had been given in exchange by the Comptroller; and all certificates issued by or under the authority of this state, which had been received by the Comptroller, in payment for lands or otherwise, for the use of the state, or had been returned by the parties who received them in exchange for certificates of debts due by the U. States, pursuant to the act of March 1st, 1786, were to be examined and cancelled, and delivered to the Register-General, who was directed to preserve them, by pasting them, in numerical order, in books of coarse paper, leaving as much of each certificate free as would discover the endorsements of interest thereon.

The powers and duties of the trustees of the Loan-Office were transferred to the Treasurer.

In case of a difference of opinion between the Register-General, Comptroller-General, or Treasurer, or either of them, relative to the duties required of them, they were required forthwith to apply to the Executive Council for their orders and directions therein, which should indemnify and save harmless all such officers paying obedience thereto.

A penalty was prescribed for refusing to deliver up official papers to the proper officers.

The Comptroller-General was further directed to proceed in the exchange of the certificates issued in lieu of those received on loan, under the orders and directions of the Executive Council. And the Comptroller and Register were, once in each month, in presence of two

members of council, to examine all certificates granted by this state, and received in exchange by the Comptroller-General, and after taking lists of them, to deliver them to the Register-General, for the purpose of being cancelled and preserved in manner aforesaid; and so much of the act of September 30th, 1789, (chap. 1452,) as directed the Comptroller-General to submit the accounts of certificates, and certificates by him to be given or received in exchange, to the inspection of the Register-General, was repealed.

By an act entitled "an act authorizing the State Treasurer to subscribe in the name of the commonwealth, to the loan proposed by the United States, and for other purposes therein mentioned," passed March 30th, 1791, (chap. 1531,) after reciting that from the dissolution of the Supreme Executive council, the directions of the last preceding act herein cited had not been fully carried into effect, and the interest of the commonwealth required that the certificates of debts due by the United States, belonging to this commonwealth should be delivered to the State Treasurer, to be subscribed to the said loan; the Register-General, Comptroller-General and State Treasurer were enjoined and required, without delay, to proceed in the examination of the certificates described in the said act, and in cancelling those directed to be cancelled; and the Comptroller-General, in the presence of the Register-General, was enjoined forthwith to deliver those therein directed to be delivered to the State Treasurer, in manner and form as prescribed in said act, save only so far as the same related to the duties to be performed by two members of the Supreme Executive Council.

The Treasurer was then directed to subscribe to the loan under the act making provision for the debt of the United States, passed, in Congress, August 4th, 1790, and at least once in every month after making such subscriptions report his proceedings therein, and settle his accounts of the certificates to him delivered in the same manner as was provided for the settlement of his annual accounts by the act to enforce the due collection of the revenues of the state. The Treasurer was directed to receive the new certificates; and the capital stock thereby created was to remain subject only to the legislative acts of the commonwealth, and the Treasurer to receive the interest as the same should grow due.

For a view of the new loan and continental certificates, and the duties of the Comptroller-General, and Treasurer therein, see the act for the further relief of the public creditors, &c. (commonly called the funding act,) passed March 1st, 1786, (chap. 1191,) to which a supplement was passed March 28th, 1787, (chap. 1271,) which extended the loan to continental Loan-Office certificates issued in the states of New-Jersey and Delaware to citizens of Pennsylvania; and see the act to repeal so much of any act or acts of Assembly as directs the payment of the new loan debt, or the interest thereof, beyond the first day of April next, and for other purposes therein mentioned, (chap. 1404,) passed March 27th, 1789, and a supplement thereto passed September 30th, 1791, (chap. 1583.)

By an act entitled "An act to enforce the due collection and payment of taxes within this commonwealth, passed March 24th, 1786, (chap. 1207,) the commissioners of the several counties were directed to prepare and transmit to the Comptroller-General, fair duplicates of the assessments made within their respective counties for the collection of state taxes; but by the 7th section of the act to provide a more effectual method of settling the public accounts of the commissioners and treasurers of the respective counties, passed March 30th, 1791, (chap. 1532,) the auditors, to be appointed under the act are required to prepare and transmit such duplicates to the Comptroller-General in all such cases where it shall appear the commissioners of such counties had omitted so to do; and also to transmit to the State Treasurer a transcript of so much of their settlement, after final judgment entered thereon, as contains the account of monies levied for state purposes within the said counties respectively.

By an act passed January 14th, 1791, (chap. 1512,) all duties which by the laws of the state were directed to be performed by the President, or President and Council, and not inconsistent with the constitution of the commonwealth, &c. were transferred to the Governor.

This act was limited to a short period, but was supplied by an act of a similar title passed April 13th, 1791, (chap. 1553,) which was also limited, but was extended by acts passed September 21st, 1791—March 28th, 1792—and April 11th, 1793, (chap. 1569, 1599, 1678,) and on the 22d of April, 1794, (chap. 1761,) a permanent act was passed, entitled "An act for vesting the powers formerly exercised by

the Supreme Executive Council, in the proper departments under the present constitution of the commonwealth," by which the Governor for the time being shall be deemed and taken to be in the place and stead of the Supreme Executive Council, or the President or Vice-President thereof, and shall have and exercise all the powers in them, or any, or either of them vested, unless such powers have been, and are, by law, vested in some other officer or officers, person or persons, or shall be inconsistent with the provisions contained in the existing constitution of the commonwealth.

It is necessary, however, to observe, that in the act of September 21st, 1791, it was provided, that in all cases, where accounts examined and settled by the Comptroller and Register-General, or either of them, have heretofore been referred to the executive authority to be by the said executive authority approved and allowed, or rejected, the same should only for the future be referred to the Governor when the Comptroller and Register-General should differ in opinion. But in all cases where they agreed, only the balances due on each account should be certified by those officers to the Governor, who was directed to proceed thereon, in like manner as if the said accounts respectively had been referred to him according to the former laws on the subject. And that in all cases where the party or parties should not be satisfied with the settlement of their respective accounts by the Comptroller and Register-General, or where there should be reason to suppose that justice had not been done to the commonwealth, the Governor, in like manner, and upon the same conditions as theretofore, was authorized to allow appeals, or cause suits to be instituted, as the case might require.

On the 30th September, 1791, (chap. 1582,) an act was passed to provide more effectually for the payment of the public debts and obligations; by which the Comptroller and Register-General, under the direction and control, and with the approbation of the Governor, were authorized to sell by private contract, at such periods, and in such sums as the Governor should direct, so much of the deferred debt, or three per cent. stock of the United States, the property of this state, as should be sufficient to make good deficiencies which had arisen, or might arise in the funds appropriated by law for the payment of any public debt or obligation then due, or which might become due prior to January 1st, 1792; for dis-

1782. charging the amount of the monies received, or which should thereafter be received, on account of a loan from the bank of North America, and for paying warrants already drawn, or that might be drawn by virtue of any previous law, on the funds appropriated for claims and improvements; but it was provided, that in disposing of the said stock, the deferred part should not be sold at a rate of exchange less than one hundred and twenty pounds in gold or silver, nor the three per cent. stock at a rate of exchange less than one hundred and fifteen pounds in gold and silver, for every two hundred pounds in the nominal amount thereof; and that the proceeds of any sale or sales of stock made in pursuance of this act, should immediately and exclusively be applied to the satisfaction and extinguishment of the debt or obligation on account of which the same should be sold.

When any sale was effected, as aforesaid, the Governor was directed to draw a warrant, or warrants upon the State Treasurer in favour of the purchaser thereof, specifying the amount of stock contracted to be sold, the price to be paid for the same, and the debt to which the proceeds were to be applied: and requiring the Treasurer to receive the stipulated price, and transfer the specified stock, in due form, to the purchaser, which the Treasurer was enjoined to perform, and forthwith to apply the money so received to the discharge of the specific debt on account of which the stock was sold: but no former appropriations were to be affected thereby.

In case a difference of opinion should arise between the Comptroller and Register-General, relative to the duties required in this act to be done by them, they were required forthwith to apply to the Governor for his orders and directions therein, which should indemnify the said officers, and they were required and enjoined to pay obedience thereto.

The accounting officers were enjoined to keep regular accounts of the sales, and present the same from time to time to the governor for his examination in like manner as other accounts: and the Governor was required to render a full and exact report and statement of his proceedings in the premises, specifying the object, the time, the price and amount of each sale of stock, to the General Assembly, within the first week of their next session, and at such other times as either branch of the Legislature should require.

The department of accounts was regulated anew by an act passed April 4th, 1792, (chap. 1616,) entitled "An act to provide for the settlement of public accounts, and for other purposes therein mentioned," by which act, from and after the passing thereof, all accounts between the commonwealth and any person or persons, body politic or corporate, as well of the officers of the revenue, and other persons entrusted with public monies, as those of persons having demands against the commonwealth, excepting only the accounts between the United States and the commonwealth, and accounts of monies due to the commonwealth for land, or from persons indebted to the Loan-Offices of 1773 and 1785, were to be submitted to, and in the first instance, examined, liquidated and adjusted by the Register-General, who, for that purpose, was vested with the like powers, as by the laws previously existing, were vested in him for the purpose of settling those accounts, which were theretofore submitted to him in the first instance, and also all the powers theretofore by law vested in the Comptroller-General, to enable him to compel the settlement of such accounts; and after liquidation and adjustment of every such account, he was enjoined to transmit the same, with all the papers and vouchers he had received relative thereto, to the Comptroller-General, who, after examination thereof, if he approved of the same, was to return them, together with his approbation, to the Register-General: but if he disapproved thereof, after having in writing informed the Register-General of his disapprobation, and the reasons thereof, if they could not then agree, he was directed to transmit the same, together with a statement of his objections to the Governor, who thereupon, after having enquired into the reasons of the Register-General in support of his opinion, was to decide as the nature of the case might require, and return the said accounts, with the vouchers thereof to the Comptroller-General, who was to submit the same to the inspection of the Register-General, and where the parties should not be satisfied with the settlement of their respective accounts in manner aforesaid, or where there was reason to suppose justice had not been done to the commonwealth, the Governor was enjoined, in like manner, and on the conditions as theretofore, to allow appeals, or cause suits to be instituted, as the case might require.

The accounts being settled in any of the ways above mentioned, or after an appeal, or suit the Comptroller and Register-General were, each of them to cause the same to be entered in suitable books to be kept in their respective offices; and each of them was, at all times to be permitted to inspect and examine all the books of the other, which each was enjoined mutually to exhibit, upon request made for that purpose: and upon such entry being made, they were jointly to certify the balance of such account, and the fundout of which the same was payable, to the Governor, who was thereupon to draw a warrant on the State Treasurer for the amount thereof, which warrant was to be countersigned by the Register and Comptroller-General, and entered on their respective books; and all the accounts, papers and vouchers relative thereto, were directed to be filed in the Comptroller-General's office and kept by him; and if there was no appropriate fund out of which the said balance could be paid, a certificate, signed and entered in the like manner, was to be delivered to the party to whom the said balance was due, stating the settlement, &c. and that there was such a sum due.

Where any certificates were issued according to the foregoing provisions, it was made the duty of the Register-General to lay before the Legislature during the first week of the ensuing session, a list of all such certificates, with the amount, and the names of the parties to whom given, that provision might be made for the payment thereof, but no certificate was to be issued bearing interest; provided, that in cases where any person, by the existing laws, was entitled to receive interest on his demand, the same was to be allowed him from the respective periods of which he, by law, was entitled thereto, until the time of payment.

The Comptroller-General was required, without delay, to make out a balance sheet, of all the balances due to and from the commonwealth on the 28th of March, 1789, and furnish the Register-General with a copy thereof, on or before the 31st of May, 1792, who, after examining the same, was directed to make out a list of all the balances due to and from the commonwealth on the 30th of June, 1792, and before the first of August, 1792, and submit the same to the Comptroller-General for his examination and approbation; and on the first day of July, 1792, each of the said officers was di-

rected to open, in his respective office, a regular set of books, to contain an exact and particular statement, as well of the said balances, as of all accounts which might thereafter be settled agreeably to the provisions of this act, which balances were to be entered in said book, to the debit and credit of the respective accounts to which they belonged; and the entries were directed to be made, and all the accounts of the commonwealth thereafter to be kept in dollars and cents.

It was further made the duty of the Comptroller-General, to compel delinquent persons, entrusted with the collection or custody of public monies, to account for, and pay the same, as directed by law; and for that purpose he was invested with all the powers he might or could legally have used and exercised before the first of April, 1790, or as the State Treasurer could have legally exercised by virtue of the act of October 4th, 1788, (chap. 1363,) and the like proceedings to be had upon warrants to be issued by the Comptroller-General as by that law was directed in proceedings under the warrants of the State Treasurer against delinquent county Treasurers.

(By that act, which has been repealed, the Treasurer had power to issue a warrant under his hand and seal, directed to the Sheriff of the proper county, commanding him to take the body, and seize and secure all the real and personal estate of the delinquent, or which should come to the hands or possession of his heirs, executors or administrators, and make return thereof to the Treasurer, at the time appointed in such warrant. And if the money was not paid within 20 days after such seizure, the Treasurer was to issue another warrant, under hand and seal, directed to the Sheriff, requiring him to sell sufficient to discharge the deficiency and costs, &c. The balances due from such county Treasurers, was to be ascertained on settlement to be made with the Comptroller-General. &c.)

The State Treasurer was directed on or before the 1st of August, 1792, to deliver to the Comptroller-General all the accounts and vouchers respecting accounts before settled by him, and in his possession; and the Register-General was directed, together with the balance sheet, to deliver to the Comptroller-General, all accounts, and vouchers of accounts, before settled by him, and in his possession.

1782.

So much of the act of April 1st, 1790, (chap. 1493,) as relates to the duties to be performed by the State Treasurer, in the examination, delivery and cancelling of the certificates directed to be delivered to the Register General and cancelled, was repealed; and the Register and Comptroller General authorized, enjoined and required to proceed without delay in the examination and cancelling of the certificates by the said act directed to be cancelled.

The State Treasurer was enjoined to deliver quarterly to the Register-General all the certificates issued by the State which he might receive from the Receiver-General of the Land-Office, to be cancelled, as other certificates were directed to be cancelled by the Register-General, who was directed to deliver to the Comptroller-General, and Secretary of the Commonwealth, severally, an exact list of all the certificates received and cancelled by him, every and each time he received the same.

The act then prescribed the time, manner and proceedings to choose a State Treasurer.

The Register-General was directed to exhibit, annually, on the second Monday of January, to the Legislature, a statement of the finances of the commonwealth; and the State Treasurer was directed to exhibit on the same day, a full and correct statement of his accounts, containing the receipts and expenditures of his office during the preceding year; but this was repealed on the 3d of March, 1800, (chap. 2105,) and the reports directed to be made on the 2d Monday of December annually. This was also repealed on the 3d of April, 1804, and the Register-General and State Treasurer were directed, respectively, to cause six hundred copies of their annual statements to be printed, and to deliver the same to the Clerk of the House of Representatives annually, on the fourth Monday in December, (chap. 2302.)

This arrangement of the accounting department continued until the first day of May, 1800: But in the mean time various duties were assigned to, and enjoined upon the Comptroller and Register General by numerous laws.

Thus, by an act to provide for paying and redeeming certain public debts, and for defraying the expenses of government, passed April 10th, 1792, (chap. 1653,) it was directed that the interest accruing on state certificates, should be paid by the State Treasurer out of the monies he should from time to time receive by virtue of the assumption and provision contained in the 17th

section of the act of congress of August 4th, 1790, and that the surplus thereof, together with the monies receivable from the Land-Office should be added to, and make for the (then) current year, a part of the aggregate fund created and established by the act authorizing the Governor to negotiate a loan for the use of this commonwealth, and appropriating certain funds and revenues for the support of Government, and the payment of the public debts (passed April 7th, 1791, chap. 1543,) for the purposes respectively to which such aggregate fund had been or should be appropriated by any law of this commonwealth.

The Comptroller and Register General were then directed to sell three per cent. stock, for the payment, redemption and discharge of certain specified debts; and the proceedings therein were exactly similar to those in the sales of certificates under the act of September 30th, 1791, (chap. 1582,) before cited. The mode of paying the holders of certificates was prescribed, and the certificates redeemed were to be cancelled, and provision was made in case Congress should renew the loan for state debts; the Governor was directed to issue a notification requiring state creditors to apply for payment, and the interest was to cease on the 1st of July, 1792. The bills of credit redeemed were to be destroyed.

From and after the 1st of January, 1793, all monies arising from the interest payable to the state on certificates issued by the United States, all monies payable to the state in pursuance of the assumption and provision in the act of Congress aforesaid, all fees of the Secretary's Office, or the Land-Office; monies arising from marriage and tavern licences, court fines, taxes on carriages, from the Land Office for payment of lands, from any public tax subsequent to the year, 1784, except payments in bills of credit emitted in 1785, and all monies arising from any other fund whatsoever, after the appropriations charged on such funds should be satisfied, were appropriated as an aggregate fund, for the annual expenses of government, pensions, annual disbursements of the legislature, and appropriations for the improvements of roads: And the Governor was empowered, from time to time, to apply the balance of monies arising from sales of stock directed by this act, in the purchase of certain bank stock: And see supplements of February 9th, 1793, (chap. 1642,) and 22d of April, 1794, (chap. 1761.)

By the act for directing the mode of distributing donation lands, &c. passed March 24th, 1785, (chap. 1128.) The Comptroller General was directed to form complete lists of the persons entitled to such lands, annexing thereto their rank, and the quantity to which they were respectively entitled, and lay the same before the Supreme Executive Council. And by the act relative to donation lands, passed April 17th, 1795, (chap. 1845) he was further directed to form complete lists of the persons entitled to receive Donation lands whose names were not included in the list referred to in his last report under the act of 1785, and to transmit the same to the Land officers, or one of them.

Duties were enjoined on these officers respecting the settlement of John Nicholson's accounts, and also on the Comptroller-General respecting the payment of taxes on his lands on which the state had a lien, but these laws are entirely obsolete.

By an act of the 5th of April, 1797, (chap. 1948,) "making appropriations, and enjoining certain duties on the Comptroller and Register-General and State Treasurer, &c." it was enacted that the Comptroller and Register-General should have the like power to settle and adjust the interest due upon certificates issued under the authority of the 4th of April, 1792, (chap. 1616, before cited,) and under the same checks and limitations, as they had in the settlement of other accounts, but no interest to be allowed after passing this act.

Also, the like power to settle with every person and persons, for supplies furnished, services rendered, or debts in any ways contracted, for the discharge of which appropriations were made by this act as were vested in them by the said act of April 4th, 1792, and under the same checks and limitations as were provided for them in the settlement of other accounts; but they were not to allow more than three dollars a day for services rendered in laying out roads, or four dollars a day for procuring information, respecting intrusions by Connecticut claimants.

They were also to report to the Legislature the first week of the next Session, the progress they had made in the settlement of John Nicholson's accounts.

The State Treasurer was directed to state, in his annual report, the name of every person for whom warrants were drawn, and the nature of the debt they were to discharge respectively.

Auctioneers to settle and pay quarterly—and the Comptroller-General was directed to proceed against those who were delinquent, in the same manner as in other cases.

By an act entitled "a supplement to the several acts passed to provide for the settlement of the public accounts," passed February 9th, 1801, (chap. 2165,) the Comptroller and Register-General were vested with the same powers in the settlement of all accounts, and compelling payment of the balances, found due to the commonwealth, which were directed to be settled with the Legislature or Governor, by the several acts which had been passed since the act of April 4th, 1792, as they had by that act; and they were directed to call upon all persons for a settlement, who had drawn monies for which they were accountable, and who had not accounted: and in case of the death of the person indebted, on his executors or representatives; and they, or either of them, when they or he conceived there was a necessity, was authorized to compel the said executors or representatives, to deliver up the books and papers of the deceased, so far as they related to the transaction in question, &c.

The Secretary of the commonwealth directed to furnish the Comptroller and Register-General with an account of all the contracts entered into between the commonwealth and individuals, and companies, with the reports respecting the same.

The Secretary of the commonwealth was also directed to place in the hands of the Attorney-General all the contracts which had not been complied with, who was to proceed thereon, &c.

March 29th, 1802, (chap. 2258,) related merely to the receipt of certain certificates from individuals, supposed to be the property of John Nicholson.

The act of April 5th, 1802, (chap. 2280,) merely related to expenses incurred under the Connecticut intrusion act.

The master warden enjoined to exhibit his accounts, quarterly, to the Register-General, to be settled as other accounts, by the 8th section of the act of March 29th, 1803, (chap. 2358,) for establishing a board of wardens for the port of Philadelphia, &c. The same duty is enjoined on the board of wardens, yearly, by the 4th section of the act of April 1st, 1795, (chap. 2579,) empowering the board of wardens to collect a certain duty on tonnage, &c. which act is limited to seven years.

1782. On the 4th of April, 1803, (chap. 2384,) an act was passed making certain appropriations, and to enable the Governor to negotiate certain loans, &c. by which the Governor was authorized to borrow from any of the banks, 50,000 dollars, to be repaid in three months, and to pledge bank and deferred stock for the repayment. He was directed to repay this loan, at the end of three months out of bank dividends, and other monies then in the Treasury, which were appropriated for that purpose; with this loan the Governor was directed to discharge a debt due to the bank of Pennsylvania.

The Governor was also authorized to negotiate a further loan, not exceeding 100,000 dollars, to discharge certificates issued for the compensation of Pennsylvania claimants for lands in the seventeen townships of Luzerne county, at an interest not exceeding six per cent. payable half yearly, and to pledge bank and deferred stock, as aforesaid, for the repayment: and if such loan could not be procured, then to sell so much of the deferred stock of the United States, the property of this state, not exceeding 100,000 dollars as should be sufficient to discharge such certificates; provided the sale could be made at *par*.

The sum of 24,132 dollars and 52 cents were appropriated out of the funds for the support of government, for the payment of certain certificates issued in pursuance of the before cited act of April 4th, 1792, and sundry expenses of the Executive department, and public offices, and for one thousand copies of Carey and Bioren's Edition of the Laws, and a debt due for sundry newspapers furnished to the Legislature.

The Secretary of the commonwealth was directed to lay before the next General Assembly, a particular account of the expenses of the Executive department.

The warrants to be drawn by the Governor for the monies appropriated by this act, were to be under the same regulations and restrictions, as directed by law in other cases.

All the powers and duties vested in the Comptroller and Register-General and Governor by the act to facilitate the settlement of the accounts of former and present County Treasurers, for arrears of State taxes, passed February 5th, 1802, were renewed and extended for one year from the passing of this act: and they were directed to lay a statement of their proceedings

therein before the Legislature on the first day of January then next.

(By the act of February 5th 1802. (chap. 2223) the Comptroller and Register-General were directed to recommend to the Governor competent agents for adjusting the accounts of County Treasurers.—Notice to be given by them, twenty days previous to the time the agents were to attend in any County, where such accounts were to be adjusted. County Treasurers, Commissioners or Auditors refusing to exhibit their books and papers, severally, to forfeit on conviction, not less than 300, nor more than 1000 dollars. The agents were to be furnished with the necessary documents by the accounting officers, before the 1st of May 1802. They were to proceed when directed by the Comptroller and Register-General, and were vested with all the powers of those officers so far as related to the adjustment of the said accounts; and settlements made by them to have the like effect, and be subject to the like appeals and restrictions as are provided by the act of April 4th, 1792.)

The new loan certificates issued under the act of March 1st, 1786, still outstanding, were to be redeemed in a certain prescribed manner: and the Comptroller-General was directed to deliver to the State Treasurer, all such certificates of six per cent.—deferred six per cent.—and three per cent.—stock of the United States, which he had received, or should receive from the late Comptroller-General, for the purpose of exchanging the said certificates issued under the said act: and any law authorizing the Governor to sell any of the stock of the United States, the property of this State, was repealed.

The Comptroller and Register-General, or either of them, were authorized and directed to inspect and examine, as often as they thought necessary, the accounts of the State Treasurer on the books of the Bank of Pennsylvania, and to adjust and settle the said accounts, in such manner, and under the like restrictions and regulations as other accounts.

And, by the act of April 3d, 1804, (chap. 2511,) the Comptroller-General was enjoined forthwith to cause all delinquent debtors to the state to be called upon, and proceeded against for the recovery of all balances due to the commonwealth, and to call on the commissioners of the different counties to collect the arrearages of state taxes,

which the respective commissioners were authorized and required to do, and after having deducted any appropriations which may have been made in their respective counties, to pay the residue into the treasury of the state.

And it was made the duty of the Comptroller and Register-General, at least once in every year, to inspect and examine, not only the treasurer's accounts with the bank of Pennsylvania and its Branches; but also such books, papers and documents in the office of State Treasurer, as they should think necessary, respecting the receipts and expenditures of public monies, and also to examine the amount of cash reserved in the treasury, to meet occasional demands; and if the State Treasurer should refuse to exhibit his books, papers, and documents, or the monies reserved in his office as aforesaid, he forfeited 2000 dollars to the use of the commonwealth, to be recovered as sums of equal amount are recoverable.

The Brigade Inspector to account with the Comptroller-General, (now Auditor General. See the militia law.

The act of April 4th, 1805, (chap. 2611,) recites, that by an act passed March 27th, 1789, and an act passed April 4th, 1803, and the first section of this act, the commonwealth had amply provided for the redemption of the certificates, commonly called new loans, issued under the act of March 1st, 1786; and had provided by an act passed April 4th, 1796, as well as by sundry preceding acts, funds fully adequate to the redemption of all the funded debt certificates, depreciation certificates, and the six per cent. and three per cent. purperts issued under its authority, and ample time had been allowed to the holders for redemption, it became the duty of the Legislature to provide by law, for closing the accounts of the commonwealth in respect of such certificates; it therefore enacted, that all such of the above described certificates, outstanding, as should not be presented to, and deposited with the Register-General, on or before the second Tuesday in January 1807, should not afterwards be received by him, nor redeemed by the State, but are declared to be forever irredeemable.

And as sufficient time had been allowed, and adequate provision heretofore made, for redemption of the bills of credit issued under the authority of the acts of 1781, and 1785, it further provided, that such of the said bills of

credit, now outstanding, as should not be paid into the State Treasury under the laws heretofore enacted, on or before the second Tuesday of January 1806, should not thenceforth be received by the State Treasurer, but should be forever irredeemable.

All warrants drawn on the Treasurer under this act, by the Governor, were to be drawn in the usual manner.

The Register-General was directed to furnish annually to the Legislature, not only the amount of unfunded certificates issued within the year, and the names of the persons to whom they were granted, but also upon what account they were issued, and that the Secretary of the land office, Surveyor, Receiver, Comptroller and Register Generals, and State Treasurer respectively should exhibit to the Legislature, annually, a statement of the manner in which any extra appropriations, which may be made for their respective departments, have been applied, and also a detailed statement of the contingent expenses of those departments.

By an act to enforce the collection and settlement of Tavern Licences &c. passed April 11th, 1807. (chap. 2858.) the Comptroller and Register-General are directed to proceed without delay against every delinquent county treasurer, in arrear for tavern Licences, and militia exempt fines.

The county commissioners are required to enforce the collection and payment of all militia exempt fines, incurred and due, on or before the second Monday in January for each preceding year, and to make return, on oath or affirmation, to the Register-General, of the whole amount of the militia exempt fines, inserted in the duplicates of each year, annually, under the penalty of five hundred dollars, each, to be recovered by the Comptroller-General in the usual manner.

The county Treasurers are directed, annually, to settle and pay over all monies received by them on account of militia exempt fines and tavern Licences, and pay the same into the State Treasury on or before the first Monday in February succeeding the said fines and Licences becoming due, under the penalty of five hundred dollars; and on neglect of such settlement and payment the Comptroller and Register General shall proceed against them, and if they neglect to proceed, for thirty days, after the said first Monday of February, they are made liable to the whole amount char-

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ged against the county Treasurers respectively.

It is made the duty of every Sheriff to account for, and pay over yearly, all fines and forfeitures received by virtue of their offices, under the penalty of double the amount, for every neglect or refusal.

The Register-General is directed, in his annual reports to the Legislature to make a correct statement of the amount of licence monies and exempt fines due from the respective counties, and the names of the county Treasurers, together with the amount of such licence money and exempt fines as have been paid into the Treasury for the preceding year.

No receipt for any money, directed by law to be paid into the State Treasury, shall be available, unless signed by the Treasurer, or some other person duly authorized by him, and for whom he shall be responsible.

By an act of Feb'y 25th, 1808, (chap. 2922,) the State Treasurer was required to subscribe all the old six per cent.—deferred,—and three per cent. stock, the property of this state, to the stock of the United States, agreeably to the provisions of the act of Congress passed supplementary to the act entitled "An act making provision for the redemption of the whole of the public debt of the United States"

The commonwealth having honourably discharged all her debts and obligations, and the duties of the accounting department being considerably diminished, and the certificates and bills of credit redeemed or extinguished, it was thought expedient to simplify the department, and to reduce its expenses. An entire change has, therefore, been made, and while all the necessary powers are preserved, the arrangement is less intricate, and the public duties faithfully performed by fewer hands, with equal responsibility.

Thus, by the act entitled "An act making a new arrangement of the treasury department, and enjoining certain duties on county commissioners," passed March 17th, 1809, (post.) it is enacted, that from and after the 1st day of May, (1809,) there shall be an officer appointed to be called the Auditor-General, who shall be invested with all the powers now possessed by the Register-General, and shall perform all the duties enjoined by law on that officer, except herein otherwise provided for, and the offices of Comptroller and Register-General shall then be abolished; and all the books and papers in the Comptroller-General's office, belonging

to the accountant and treasury department, which have any connexion with the unsettled public accounts, shall be deposited in the office of State Treasurer, and the remaining books, papers and documents in the Comptroller-General's office, the accounts of which are closed and finished, and which are no longer necessary in the transactions or management of the fiscal concerns of the state, and all the books, papers and records in the office of the Register-General shall be deposited in the office of the Auditor-General; together with the treasury warrants which may be then in the office of the Comptroller-General, until they be respectively called for; and it shall be the duty of the Prothonotaries, Sheriffs, Treasurers, and all officers or other persons, whose duties by the existing laws require a return to be made to, or settlement with the Register-General, the same shall be made to the Auditor-General, at the same time, and in the same manner as is now required by law.

It shall be the duty of the State Treasurer to examine and revise all settlements made by the Auditor-General; and if he approve thereof, shall countersign such settlements, and return the same, with all the accompanying vouchers, to the Auditor-General; but if they disagree in the settlement of any account, the disagreement shall be settled in the manner previously directed by law, in case of disagreement between the Comptroller and Register-General, with like appeal to persons conceiving themselves aggrieved.

When any account shall be settled, whereon a balance shall be found due from the commonwealth, and money remaining in the treasury previously appropriated by law, for its payment, the Auditor-General shall draw his warrant on the State Treasurer, for the amount thereof, who shall pay the same; but if no such appropriation shall have been made, by law, for its payment, the Auditor-General shall make report thereof to the House of Representatives, if in Session, if not, then during the first week of the next session, that provision may be made by law for its payment; and no unfunded certificate shall hereafter be issued on any account whatever.

The State Treasurer shall pay all salaries annuities and pensions, which are or shall be fixed by law; and make all other payments which are or shall be so fixed by law, as that the sum to be paid cannot be affected by the settlement of any account, nor increased, nor diminished by the discretion of the Auditor.

or Treasurer: And the Treasurer shall open and keep regular accounts of all the payments he shall make; and in his settlement with the Auditor-General, produce the receipt of the party to whom the money was by law payable, or the receipt of his agent or representative, properly authorized to receive the same, as a voucher to prove the payment of the money.

All the powers and duties, vested by law, in the Comptroller-General, for the collection of public monies due to the commonwealth, and for sending for persons and papers, not herein before enumerated, and in force on the 1st of May, 1809, are transferred to, and vested in the State Treasurer.

The Auditor-General to procure a seal of office, and all papers certified by him under seal of office shall be legal evidence in Courts of Justice.

The Auditor and Treasurer shall annually exhibit their accounts and vouchers on which settlements shall have been made, to a joint committee of both houses of the Legislature, whenever a committee for that purpose shall be appointed, who shall be authorized to investigate the same, and make report to their respective houses.

The Auditor-General to give security to the commonwealth, for the true and faithful performance of the trust and duties enjoined upon him, in the sum of 5000 dollars, and the obligation shall be recorded in the office of the Secretary of the commonwealth. The Governor to approve of the security.

The Auditor-General to be appointed for three years from the first of May, but shall be removed from office by the Governor, on the address of both houses of the Legislature; and shall receive a salary, yearly of \$1333 dollars and 33 cents, in quarterly payments.

Appeals to be tried in the Common pleas. (ante.)

The county commissioners respectively are enjoined, under the penalty of 100 dollars, to certify the name of the Treasurer of the proper county, with the date of his appointment, within thirty days thereafter, to the State Treasurer.

Such part of any acts, hereby altered or supplied, is repealed.

Having given a general view of the powers and duties of the accounting officers, vested in and enjoined upon them, by various acts, from time to time, it may also facilitate the researches of the curious enquirer into the general policy and economy of the commonwealth to exhibit a summary of the accounts and revenues under

various laws, generally not mentioned in the foregoing statement.

Bills of credit were emitted as follows.—

March 20th, 1777. An act for emitting the sum of two hundred thousand dollars, in bills of credit, for defence of the state, and providing a fund for sinking the same, by a tax on all estates, real and personal, and on all taxables, (chap. 741.) Supplement thereto, October 13th 1777, (chap. 756,) revived and continued, December 5th, 1778, (chap. 812)—now obsolete: see chap. 1459. *infra*.

March 28th, 1780. Act for striking one hundred thousand dollars, in bills of credit, for the present support of the army, and for establishing a fund for the certain redemption thereof, (chap. 896.)

April 7th, 1781, Act for emitting five hundred thousand pounds in bills of credit for the support of the army, and for establishing a fund for the redemption of the same, (chap. 928,) altered and repealed in part by act of April 13th, 1782, (chap. 967.) See chap. 992.

March 16th 1785. Act for furnishing the quota of this State towards paying the annual interest of the debts of the United States, and for funding and paying the interest of the public debts of this State, (chap. 1126.—By this act one hundred and fifty thousand pounds were emitted in bills of credit. For part of which sum, a Loan Office was established, viz. fifty thousand pounds, by act of April 4th 1785, (chap. 1148.)—to which there was a supplement passed, Sept'r 10th, 1785. (chap. 1163.)—altered and amended November 27th, 1787, (chap. 1317.)

The act of March 16th, 1785, was in part repealed by an act passed April 9th, 1791, (chap. 1549,) entitled an act granting relief to certain creditors of the State, and for repealing part of an act &c.—By which the State stood pledged to the creditors of this State, who subscribed to the Loan proposed by congress, to pay interest on that part of the subscribed debt, termed the deferred debt, until congress should provide for the payment thereof: and certificates were to be given for that purpose—Interest on such certificates, and others, on which interest was payable, to be paid half yearly—Treasurer to make entry of such certificates &c. and so much of the act of March 1785, and of any other act, as authorized the levying and collecting a tax of £76,945,17, 6. yearly was repealed. (See the act of April 4th, 1803. *ante*.)

1782.

1782.

March 23d, 1778. An act passed for calling in the bills of credit issued by the Legislative authority of Pennsylvania, under the sanction and authority of the crown of Great Britain &c. (chap. 780.) A supplement to this act was passed, May 25th, 1778, (chap. 789,) to include the bills of credit emitted September 30th, 1775, to which the original act did not extend. They were to be exchanged for congress bills, which were made a legal tender, &c.

June 1st, 1780, (chap. 901.) An act passed for funding and redeeming the bills of credit of the United States of America and for providing means to bring the present war to a happy conclusion.

This act was founded on a resolve of congress of the 18th of March 1780, and pledged the State for the redemption of her quota of the congressional emission of bills of credit, usually denominated dollar money.—By a supplement passed December 19th, 1780, (chap. 910.) Provision was made for levying the States quota (1,250,000 dollars) by taxes on the city and counties respectively.—See chap. 992. By an act of March 17th, 1786, (chap. 1201,) to provide for payment of principal and interest of such bills emitted pursuant to a resolution of congress of March 13th, 1780, and the act of June 1st, 1780. The Treasurer was directed to receive these bills, and to pay them, respectively, either in specie, or in bills of credit of the year 1785, and appropriated the principal and interest of the Loan Office mortgages of the year 1773, for that purpose. By an act of March 22d, 1788, (chap. 1329.) All the bills of credit, emitted in pursuance of the said act of 1st June 1780, which then were, or thereafter might be in the Treasury of the State, were directed to be destroyed. By an act of the 22d of November, 1788, (chap. 1373.) that part of the act of 17th March, 1786, by which the redemption of the bills was limited to the 1st January, 1789, is repealed. By a resolution of the Legislature, passed April 12th 1791, provision is made for settling the balance of the dollar money, in possession of the general government; and by the act of the 10th of April, 1792, effectual provision was made for the redemption and payment of these and other bills, (chap. 1635.)

The act for facilitating the redemption of the bills of credit emitted in the year 1781, and for redeeming part of the funded debt of the State by the speedy collection of arrearages due for unpatented lands &c. passed March

28th 1787, (chap. 1272,) and the acts of March 29th, 1788, (chap. 1337,) March 21st, 1789, (chap. 1391,) and March 29th, 1790, (chap. 1491,) connected therewith, will be detailed in the notes to the laws respecting the Land-Office.

March 1st, 1786, (chap. 1191.) The act was passed for the further relief of the public creditors, who are citizens of this State, by receiving on Loan certain debts of the United States of America, and for funding the same, and for paying the annual interest of such loans, and the interest of certain debts of this State every six months, (see chap. 1126, supra.) By an act of March 28th 1787, (chap. 1271,) the loan here opened was extended to continental Loan Office certificates issued in the States of New Jersey and Delaware to citizens of this State. But by an act passed March 27th, 1789, entitled "An act to repeal so much of any act, or acts of Assembly of this commonwealth, as directs the payment of the new loan debt, on the interest thereof, beyond the first day of April next &c." it was enacted that the interest due, and to become due and payable, upon all and every the certificates, issued by the Comptroller-General in pursuance of the acts of March 16th, 1785.—March 1st, 1786 and March 28th, 1787, or either of them, should be paid up, so as to complete the payment of interest to four years; and so much of every act, as directed or secured the payment of the principal sum, in said certificates, or any of them mentioned, or the interest thereof, beyond the term of four years, was repealed: and a provision was made for re-exchanging the continental certificates for the new loan certificates, respecting which, additional regulations were introduced by the act of April 1st, 1790, (chap. 1495.) See a supplement to the act of March 27th, 1789, passed September 30th 1791, (chap. 1583.) see also the act of March 30th, 1791, (chap. 1531.)

The re-exchange was necessary—And in the case of *Respublica v. Nicholson*, in the Supreme Court, December 1795, it was held that the new loan certificates issued under the act of March 1786, were not state debts subscribable as part of the assumed debt to the Loan proposed by congress under their act of August 4th, 1790, nor redeemable under the act of Assembly of April 10th, 1792. MSS. Reports.

On the 1st, of March, 1780, (chap. 869.) an act was passed for the more effectual supply and honourable reward

of the Pennsylvania troops, in the service of the United States of America—And on the 18th December, 1780, (chap. 909) an act was passed to settle and adjust the accounts of the troops of this State in the service of the United States, and for other purposes therein mentioned.

This latter act provided for settling the depreciation of the pay of the Pennsylvania line, and state navy; and for issuing depreciation certificates for the amount. Those certificates were declared to be receivable in payment for confiscated estates, and unlocated lands; provision was made to prevent transfers of the certificates of private, unless attested by the commanding officer of the regiment; and a scale of depreciation was established for making this settlement.—The settlement was completed, and all the certificates issued in consequence of it, have, at subsequent periods been redeemed or paid—See chapters 930, 944, 960, 977, 996, 1013, 1025, 1155, 1181, 1199, 1208, 1295, 1635, 1642, 1764, and the act of April 4th, 1796, (chap. 1891.)

See also the act for the better support of public credit, &c. by an immediate sale of lands, &c. (city lots, &c.) passed April 10th, 1781, (chap. 931,) amended by an act passed April 7th, 1807, (chap. 2815.) See title City Lots in the General Index.

With respect to the settlement of public accounts, see the following acts:

September 2d, 1778, (chap. 795)
December 5th, 1778, (chap. 813.)
March 31st, 1779, (chap. 824.) These related to the accounts of the late committee and council of safety, and were all repealed and supplied by an act to compel the settlement of public accounts, passed March 1st, 1780, (chap. 871,) to which a supplement was passed May 30th, 1780, (chap. 898.) These were again repealed and supplied by chap. 959, (the act in the text.)

The act to compel certain persons entrusted with public monies by or for the use of this commonwealth, to account for the expenditure of the same, and to pay such parts thereof as they shall be chargeable with into the State Treasury, passed April 2d, 1779, (chap. 827,) was also repealed by chap. 871.

Act for settling the public accounts of the United States of America, March 20th, 1783, (chap. 1009,) and an act to carry into immediate effect the resolutions of the United States, in Congress assembled, for adjusting the claims of individuals of this commonwealth

against the said United States, was passed December 1st, 1784, (chap. 1107,) by which the Executive was empowered to appoint two commissioners, in addition to those appointed by congress, for the purpose of expediting the settlement of the certificates and claims of the citizens of this state against the United States, and powers were vested in them, similar to those under the preceding chap. 1009. This act was repealed March 30th, 1785, (chap. 1140.)

April 1st, 1791, (chap. 1560,) commissioners were appointed to superintend the settlement of the accounts of this state with the United States, which ceased, by the act of April 8th, 1793, (chap. 1662.)

February 4th, 1801, (chap. 2163,) an act was passed to facilitate the settlement of the accounts of former and present county Treasurers, for arrears of state taxes, which was repealed and supplied by an act of the same title, passed Feb'y 5th, 1802, (chap. 2223,) which was renewed and continued for one year by the 8th section of an act passed April 4th, 1803. (chap. 2384.)

A previous act had been passed to provide for ascertaining the arrearages of taxes, April 17th, 1795, (chap. 1831,) which was continued till January 1st, 1797, by a supplement passed March 17th, 1796, (chap. 1868.)

March 21st, 1783, (chap. 1010,) act for providing for the quota of Federal supplies for 1783, and for the relief of the citizens, who have become creditors of the United States of America, by loans of money, or other modes of furnishing public supplies,—supplement thereto, September 25th, 1783, (chap. 1041.)

United States' certificates were prohibited from being received in the Land-Office in payment for lands, by act of November 20th, 1789, (chap. 1456.)

And on the 21st November, 1789, (chap. 1457,) an act was passed to limit the time of exhibiting claims against the state for supplies furnished, or services rendered during the late war. The period fixed was January 1st, 1791.

The act for the support of government, making the excise on wine, rum, brandy and other spirits more equal, and preventing frauds in the collecting and paying the said excise, passed March 21st, 1772, (chap. 656,) was amended and continued, by an act passed April 6th, 1781, (chap. 926,) bur

1782. was repealed September 21st, 1791, (chap. 1571.)

A Loan Office was established for the sum of five hundred thousand dollars, April 11th, 1793, (chap. 1686.) which was repealed, so far as it had not been acted on, April 18th, 1794, (chap. 1739.)

April 17th, 1795, (chap. 1838,) the governor authorized to vest the unproductive monies of this commonwealth in certain description of public debt. And see the act to encourage the patenting of lands passed April 4th, 1805, (chap. 2695.) Auction duties to be vested in stock, March 4th, 1807, (chap. 2757,) see the act for the improvement of the state, by which other funds are to be vested in stock, March 21st, 1808. (chap. 2930.) All surplus money in the Treasury, exceeding 30,000 dollars, from time to time, to be vested in stock, see the act of March 20th, 1810.

For loans to the state, and investments of money in numerous incorporated companies—see Index.

For the bills of credit, emitted previous to the revolution—See chapters, 261, 267, 274, 289, 300, 319, 353, 363, 406, 412, 513, 656, 672, 698, 713, which will be found in the titles prefixed to this volume.

With respect to the Luzerne controversy, and the powers and duties vested in and enjoined on the accounting officers and issuing and redeeming certificates relating thereto, see the act of April 4th, 1799, (chap. 2042,) and 15th March, 1800, (chap. 2, 37.)

See also the following titles, in the General Index.

State Treasurer—County Treasurer—County Rates and Levies—Auditors—Auctions—County Commissioners—and Taxes.

The Comptroller-General has no power to settle demands arising from torts, or the wrongful acts of any of the officers of the state. *Black and others, ex-ecutors of Newbold v. Republican* Supreme Court, April 1792. MSS. Reports.

CHAPTER DCCCLXIV.

A SUPPLEMENT to an act, entitled “An act to alter and amend an act, entitled “An act for the effectual suppression of public auctions and vendues, and to prohibit male persons, capable of bearing arms, from being hawkers and pedlars.”

SECT. I. WHEREAS the commissions or recompence, allowed to the auctioneers for the city of Philadelphia, the Northern-Liberties and the district of Southwark, respectively, for the services by them performed, by virtue of the act of Assembly, entitled “An act to alter and amend an act, entitled “An act for the effectual suppression of public auctions and vendues, and to prohibit male persons, capable of bearing arms, from being hawkers and pedlars,” passed the twenty-third day of September, in the year one thousand seven hundred and eighty, have been remonstrated against by the merchants, traders, and others residing within the said city, liberties and district, and are deemed more than adequate or necessary: And whereas the exigencies of government require immediate additional funds, for the support thereof:

SECT. II. *Be it therefore enacted, by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same, That the auctioneers of the city of Philadelphia, the Northern-Liberties and the district of Southwark, respectively, may and shall, from and after the passing of this act, have and receive, for their expenses and trouble in selling any property at public auction, collecting the money, and paying over the same without loss, the following allowance or reward, and no more; that is to say, for houses, lands, tenements or real*

Allowance
to the auc-
tioneers.

estates, and for ships or vessels, an half per centum; for wine, rum, sugar, coffee, tea, and all other groceries, sold by the pipe, hogshead, tierce, barrel, bag, chest or box, one and a quarter per centum; and for horses, cattle, and all other goods, wares and merchandizes, not before enumerated, or sold in smaller quantities than before mentioned, two and an half per centum. *Provided always,* That any person or persons may contract and agree with any of the said auctioneers to pay them for their services in the premises any less reward, which they may be willing to accept. 1782.

[SECT. III. *And be it further enacted by the authority aforesaid,* That every of the said auctioneers, from and after the passing of this act, is hereby authorized, empowered and required to demand and receive, over and above the sum mentioned in the aforesaid act, to which this is a supplement, an additional one per centum of the gross amount of the sales by him made in pursuance of the said act, for the use of this commonwealth, except for ships or vessels, houses and lots; and shall account for and pay over the same to the State Treasurer, within the time and in the manner directed with respect to the one per centum imposed by the said act, under the penalty in the said act mentioned. Auctioneers to demand and receive an additional one per centum for the use of the commonwealth; [Reduced by the act of March, 27th, 1790 chap. 1483.]

SECT. IV. *And be it further enacted by the authority aforesaid,* That the several bonds given by the said auctioneers to the President, for the faithful performance of the duties of them required by the aforesaid act, shall be a security for the payment of the one per centum imposed by this act. and for the payment of which, their bonds to the President shall be a security.

SECT. V. *And be it further enacted by the authority aforesaid,* That the revenue arising from the sales by auction in the city of Philadelphia, the Northern-Liberties and the district of Southwark, from and after the passing of this act, shall be, and the same is hereby appropriated to the support of government, and the administration of justice within this commonwealth.* Revenues appropriated. [* See the note to chap. 908.]

Passed 13th April, 1782.—Recorded in Law Book No. I. page 521. (x)

(x) See the act to which this is a supplement, chap. 908, ante vol. I. pa. 509, and the note thereto subjoined, which refers to all the laws passed on this subject. (*Note to former edition.*)

CHAPTER DCCCCLXVI.

An ACT for establishing ferries on the rivers Monongahela and Youghiogany.

[WILLIAM CRAWFORD authorized to establish a ferry over the river Youghiogany at Stewart's Crossings, and JOHN DEVOIR, executor, &c. of JACOBUS DEVOIR, on behalf of the orphan children of Jacobus Devoir, and JOSEPH PARKINSON authorized to establish a ferry over the river Monongahela, about thirty perches below the mouth of Pigeon creek.]

SECT. IV. *And be it further enacted by the authority aforesaid,* That the said rivers, so far up as they or either of them have been or can be made navigable for rafts, boats and canoes, and within the Which rivers are declared to be public highways.

1782. bounds and limits of this state, shall be, and are hereby declared to be public highways.

Passed 13th April, 1782.—Recorded in Law Book No. I. page 522.

CHAPTER DCCCCLXVIII.

An ACT for vesting in the American Philosophical Society, held at Philadelphia, for promoting useful knowledge, the property therein mentioned, upon the conditions therein specified. (y)

Passed 15th April, 1782.—Private act.—Recorded in Law Book No. I. page 524.

(y) By this act, the property and monies of the Silk Society were transferred to the Philosophical Society, who are to be accountable, and re-deliver the same, whenever a majority of the subscribers to the Silk Society shall request it, in order to revive their institution.—For the incorporation of the Phi-

losophical Society, see an act of the 15th of March, 1780; and for the legislative grant of a lot in the State house square, on which to erect a Philosophical Hall, see acts of the 28th of March, 1785, and 17th of March, 1786. (*Note to former edition.*)

CHAPTER DCCCCLXIX.

[Ante. chap. 472, vol. I. pa. 240.]

An ACT to amend an act, entitled “An act to enable the owners of Schuylkill Point meadow land, in the county of Philadelphia, to keep the banks, dams, sluices and flood-gates in repair, and to raise a fund to defray the expenses thereof.”

Passed 15th April, 1782.—Private Act.—Recorded in Law Book No. I. page 525.

CHAPTER DCCCCLXX.

An ACT to vest a certain lot or lots of ground, in the district of Southwark, in trustees, for the use of a public landing, upon the conditions hereinafter mentioned, and other purposes. (z)

SECT. 1. WHEREAS the inhabitants of the district of Southwark have been long desirous to procure a commodious lot or lots of ground, for the purpose of public landings and streets within the said district, and in pursuance of such desire Luke Morris, Thomas Penrose and James Penrose, did, in the year of our Lord one thousand seven hundred and sixty-eight, purchase of John Jekyll three lots of ground, situate on the east side of Front-street, in the said district, and extending from thence across Penn-street and Water-street into the river Delaware, which said lots were conveyed to them, as joint tenants, in fee, by indenture, bearing date the twelfth day of May, Anno Domini one thousand seven hundred

(z) See various acts relating to Southwark, passed the 26th of March, 1762, the 20th of September, 1782, the 29th of September, 1787, and the 4th

of October, 1788. See also chap. 481, vol. I. page 248, and the note there subjoined. (*Note to former edition.*)

and sixty-eight: And whereas the said **Luke Morris**, **Thomas Penrose** and **James Penrose**, by a certain deed-poll, under their hands and seals duly executed, bearing date the said twelfth day of **May**, in the same year, did declare and acknowledge that the said purchase, so as aforesaid by them made, was intended for public use; and did covenant and promise, that if the inhabitants of the said district should incline to take the same, and should, within three years then next following, well and truly pay, or cause to be paid, to the said **Luke Morris**, **Thomas Penrose** and **James Penrose**, their heirs, executors, administrators or assigns, the full purchase money by them paid, together with lawful interest for the same, and such reasonable costs and charges as should accrue to them upon the said purchase, then, and in that case, they, the said **Luke Morris**, **Thomas Penrose** and **James Penrose**, or the survivors or survivor of them, would, by good and sufficient conveyance and assurance in the law, convey and assure the said lots of ground to trustees, to be appointed for that purpose, to be held by them, their heirs and assigns, for ever, in trust for the public use, as in and by the said indenture and deed-poll, recorded in the rolls-office for the county of **Philadelphia**, more fully appears: And whereas divers attempts have been made by the inhabitants of the said district to fall upon some mode of raising money for those purposes, but hitherto the same have proved abortive: And whereas the said inhabitants of **Southwark** aforesaid have lately chosen and appointed **Robert Knox**, **Joseph Blewer**, **Joseph Turner**, **John Brown**, **William Clifton** and **Isaac Penrose**, to be a committee, to transact all business touching and concerning the said lots, and to endeavour to raise monies, and procure a title to themselves for the said lots, for public use, which committee having had several conferences with the said **Luke Morris**, **Thomas Penrose** and **Abel James** (guardian, duly appointed, of **Clement Penrose**, the only child of the said **James Penrose**, who is since dead) and have come to an agreement concerning the same:

SECT. II. *Be it therefore enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same,* That **James Pemberton**, **Joseph Swift**, **Peter Knight**, **Henry Drinker** and **Richard Wells**, or any three of them, shall be, and they are hereby, appointed auditors, to hear forthwith the said **Luke Morris**, **Thomas Penrose** and **Abel James**, and examine their accounts and vouchers, and to settle the same agreeable to the original intent of the parties, and by deeds-poll, under their hands and seals, to certify and ascertain the precise sum of money due to each of them, the said **Luke Morris**, **Thomas Penrose** and **Clement Penrose**, as the representative of the said **James Penrose**, for their respective shares of the principal, interest, and costs of the said purchase; which certificates, so executed as aforesaid, shall be delivered to the said parties, and shall be and remain conclusive evidence of the amount of the said respective sums due. And the said auditors shall have power to proceed upon the said examination and settlement of the accounts *ex parte*, if any of the persons concerned shall neglect or refuse to attend them upon ten days notice.

SECT. III. *And be it further enacted by the authority aforesaid,* That if the said **Robert Knox**, **Joseph Blewer**, **Joseph Turner**, Auditors appointed to examine and settle the accounts and certify the sums due to Luke Morris, and others, &c. On payment of the sums certified, the

1782. John Brown, William Clifton, and Isaac Penrose, or any of them, do and shall well and truly pay, or cause to be paid, to the said Luke Morris, Thomas Penrose and Clement Penrose, or to their heirs, executors, administrators and assigns, or to the guardian of the said Clement Penrose, the several and respective debts or sums of money, so as aforesaid to be certified and ascertained by the said auditors, with interest thereon from the date of the said deeds-poll, within two years next after the passing of this act, and shall procure acknowledgments, endorsed thereon, and signed by the said Luke Morris, Thomas Penrose and Clement Penrose, respectively, or their heirs, executors, administrators or assigns, or the guardian of the said Clement Penrose (who are hereby enjoined and required to sign such acknowledgments upon receipt thereof) that such monies are well and truly paid to them, then the said deeds-poll, and the acknowledgments endorsed (being proved and acknowledged by the parties, in the manner and form that deeds of conveyance are usually proved or acknowledged) shall and may be recorded in the office for recording of deeds in and for the county of Philadelphia, and shall vest the estate of inheritance, in fee simple, of and in the said lots, in them, the said Robert Knox, Joseph Blewer, Joseph Turner, John Brown, William Clifton and Isaac Penrose, as fully and effectually as the same could be vested in them by any feoffment or deed of conveyance whatsoever; in trust, nevertheless, to and for the uses, intents and purposes, hereafter mentioned.

Trustees neglecting or refusing to pay, their right, &c. shall cease.

SECT. IV. *And be it further enacted by the authority aforesaid,* That if the said Robert Knox, Joseph Blewer, Joseph Turner, John Brown, William Clifton and Isaac Penrose, shall neglect or refuse to pay to the said Luke Morris, Thomas Penrose and Clement Penrose, respectively, their heirs, executors, administrators or assigns, or to the guardian of the said Clement Penrose, the said several and respective sums of money, so as aforesaid certified and ascertained by the said auditors to be due to them, with interest for the same, for the space of two years next after the passing of this act, then, and from thenceforth, all right, title, interest, claim and demand, whatsoever, both at law and in equity, which the said trustees, in behalf of the public, have, or claim to have, of, in and to the said lots of ground, shall cease, determine, and become absolutely void and extinct, and the said Luke Morris, Thomas Penrose and Clement Penrose, and their heirs and assigns, shall and may have, hold and enjoy the same, to their own proper use and behoof, as tenants in common, in equal shares and proportions, in fee-simple, without any further or other release or conveyance.

SECT. V. *And whereas it is intended to raise a sum of money,* by laying and collecting a tax upon the real and personal estates within the said district, in yearly portions, sufficient within a reasonable number of years, to reimburse the said trustees the whole principal, and interest thereon, which they shall advance for procuring the aforesaid title to them, and it is reasonable that they should be fully secured and indemnified from loss by paying their private monies, or engaging their private credit, for public use :

SECT. VI. *Be it therefore enacted by the authority aforesaid,* 1782.
 That so soon as the said trustees shall, by payment of the said purchase money, have procured a title to themselves, it shall and may be lawful for them, or the survivors of them, to lay out such parts of the said lots, as they shall think necessary for the use of the public, for streets and landings; and if any should be left, which in their judgment will not be necessary for public use, then they, or the survivors of them, shall and may sell all such unnecessary parts of the said lots by public sale, for the best prices that can be obtained, and make good and perfect titles for the same to the purchasers, in fee-simple, and apply the monies arising from such sales towards the payment of themselves for the monies they shall be in advance; and that it shall and may be lawful for them, or the survivors of them, to borrow on interest any sum or sums of money, not exceeding the amount which shall then be due to them, and to grant, bargain, sell, convey and assure to the lenders, in mortgage, all such parts of the said lots as shall be retained for public use; which deeds of mortgage shall be as good and valid in the law, for securing the payment of the monies borrowed, as any mortgage made by a private person of his own estate now is.

After payment, trustees may lay out the streets &c.

SECT. VII. *And be it further enacted by the authority aforesaid,*
 That it shall and may be lawful for the said trustees, and the survivors of them, to demise, grant, and to farm let, to any person or persons whatsoever, for any term of years, not exceeding seven at one time, all the wharves, keys, and landing-places, belonging to the said lots, as a public landing-place, reserving such rents and conditions, and establishing such rates and prices for the toll or wharfage of all kinds of articles which are usually brought to public landings, as they shall think reasonable, and restraining the tenant from demanding higher rates and prices, and binding him in sufficient penalties in all things to abide by such rules, orders and regulations, as the tenants of the public landings in the city of Philadelphia are bound to observe, and to receive the rents, issues and profits thereof, and to apply the same in discharge of the incumbrances on the said lots.

And let out the wharves, &c.

SECT. VIII. *And be it further enacted by the authority aforesaid,*
 That so soon as a sufficient sum of money shall be raised, by sale of part of the premises as aforesaid, by the rents, issues and profits of the residue, and by a public tax, which is intended to be laid and collected within the said district, or by any other means, sufficient to discharge all the incumbrances which the said lots shall be subject to, in manner aforesaid, then the said Robert Knox, Joseph Blewer, Joseph Turner, John Brown, William Clifton and Isaac Penrose, or the survivors or survivor of them, or the heirs and assigns of the survivor, shall, by good and sufficient conveyance and assurance in the law, grant, release and confirm the said premises, which shall be retained for public use as aforesaid, to the supervisors of the highways in and for the said district of Southwark for the time being (who are hereby erected into and declared to be one body politic and corporate, for this especial purpose, in deed and in law capable of holding the same, and of suing and being su-

All incumbrances being discharged, trustees to convey the premises to the supervisors of the highways.

1782. ed, in all actions touching and concerning the same) by the name of The supervisors of the public landings and highways in the district of Southwark, and to their successors, for ever, in trust for the use of the public, in the manner herein after mentioned ; that is to say, in trust, that the said supervisors for the time being, or a majority of them, with the approbation of three Justices of the peace of and for the said county, shall and may demise, grant, and to farm let, the same landings, to any person or persons, for any term of years, not exceeding seven at one time, upon such rents and conditions as they shall think proper ; and shall and may make such rules, orders and regulations, for the well governing as well the tenants thereof, as the boats, flats, carts and waggons, which shall frequent the same, and the owners, skippers and drivers thereof, and the prices or rates of toll or wharfage to be paid for all articles to be unladen thereon ; and that the said supervisors shall receive the rents, issues and profits thereof, and apply the same to make any improvements or buildings thereon, to pave any of the streets, or to maintain and repair any of the highways, or to any other public use, within the said district, which the said supervisors, or a majority of them, with the approbation of three Justices of the said county, as aforesaid, shall order, direct and appoint.

Passed 15th April, 1782.—Recorded in Law Book No. I. page 527.

CHAPTER DCCCCLXXI.

An ACT to amend and render effectual an act, entitled “An act for regulating party walls and partition fences in the city of Philadelphia,” to declare divers new streets and ways opened and to be opened and laid out within the said city, to be highways, and also to declare nuisances by buildings within the said streets removeable, and for other purposes therein mentioned. (a)

SECT. 1. WHEREAS an act of Assembly, passed on the twenty-fourth day of February, which was in the year of our Lord (according to the new stile) one thousand seven hundred twenty and one, entitled “An act for regulating party walls and partition fences in the city of Philadelphia,” has upon experience been found to be an useful law, by preventing contentions concerning the boundaries of landed property within the said city, and by preserving the breadth and directness of the streets and alleys of the said city : And whereas, ever since the late revolution, the said act, though revived with divers other laws of the late province of Pennsylvania, has been wholly dormant and inoperative, because of the dissolution of the late corporation of the mayor and commonalty of the said city,

a) For the act referred to in the title, see vol. I. page 124, chap. 242, and the note there subjoined.

The twelfth section of this act was repealed by an act of the 20th of September, 1782, (chap. 979.) By a decision pronounced by Judge Shippen, in the court of Common Pleas of

Philadelphia county, the reimbursement of the cost of the moiety of a party wall, is declared to be only a personal charge against the builder of the second house, and not a lien upon the house itself.—See 1. Dallas’s 345. (Note to former edition.)

which corporation, in and by the said act, was authorized to appoint the surveyors and regulators in the said act mentioned, and to receive and determine appeals from the said surveyors or regulators : And whereas divers amendments to the said act may be usefully made :

1782.

SECT. II. *Be it therefore enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same,* That any four or more of the Justices of the peace, who are or shall be commissioned for the city and county of Philadelphia, residing in said city, together with four or more of the commissioners for paving and cleansing the streets of the said city, shall appoint the surveyors or regulators aforesaid, as fully to all intents and purposes, as they were formerly appointed by the Mayor and commonalty of the said city, in Common Council assembled ; and in case of the death, removal, refusal to serve, or misbehaviour, of any of the persons appointed by virtue of this act, the said Justices and commissioners to appoint another or others in his or their room and stead.

By whom regulators are to be appointed,

and vacancies supplied,

SECT. III. *And be it further enacted by the authority aforesaid,* That all appeals hereafter made from the order, direction and award of the said regulators, in pursuance of the said act, and of this act, shall be taken and made, and shall lie to the next court of Common Pleas to be holden for the county of Philadelphia, after the expiration of one calendar month from the time of making the order, direction or award, appealed from, but not afterwards nor otherwise ; whereupon the said court (upon security being entered by the party appealing for the payment of costs, as well his own as those of the party appellate, in case he or she prevail not in his or her suit) shall direct a venire to the Sheriff of the county, commanding him to summon a jury to try the matter in dispute, and shall proceed therein according to the course of the common law.

Appeals from the order of the regulators shall lie to the next Court of Common Pleas.

Proceedings on the appeals.

SECT. IV. *And be it further enacted by the authority aforesaid,* That if any person shall lay the foundation, or begin to lay the foundation of any party wall, or of any wall adjoining or upon the line of any public street, lane or alley, within the said city, before the line and boundaries of the lot or piece of land whereon the said foundation shall be so laid, or begun to be laid, shall be adjusted and marked out by the said regulators, or two of them, every such person, as well employer as master-builder, shall forfeit the sum of ten pounds, one half part thereof to the street commissioners for the time being, to be laid out towards making or amending the pavements of the public streets, and the other half thereof to the use of the informer, together with costs ; provided the prosecution be commenced in the city of Philadelphia, and within twelve calendar months after the offence shall be committed.

Penalty on laying the foundation of a party-wall before viewed by the regulators.

Limitation of the prosecution.

SECT. V. *And be it further enacted by the authority aforesaid,* That, as soon as conveniently may be, the northern line of Vine-street and southern line of Cedar-street shall be ascertained, regulated and marked out, by the regulators of the city of Philadelphia, assisted by the regulators of the district of the Northern-Liberties,

Northern line of Vine-street, and southern line of Cedar-street, to be ascertained.

1782.

so far as said district that they are appointed for is bounded on the said city ; and assisted by the regulators of the district of Southwark, so far as the said district is bounded on said city ; and the rest of the northern line of Vine-street, and the rest of the southern line of Cedar-street, respectively, shall be ascertained, adjusted and marked out, by the regulators of the said city ; which regulating and marking out of Vine and Cedar-streets shall be performed and done at the joint proportionable expense of the said city and districts, to be paid by the commissioners for paving and cleansing the streets, and by the regulators of the said districts, respectively, upon the certificate of the regulators of the said city and districts, who are hereby empowered to proportion the said expense.

How the
expense
shall be de-
trayed.

Regulators
to enter all
orders, &c.
in a book to
be provided
for that
purpose.

Their
awards
binding on
all persons,
unless ap-
pealed
from.

Proceedings
of Justices
to be record-
ed.

Proviso re-
specting
persons
under age,
or other
legal dis-
ability.

Regulators'
fees.

How to be
paid.

Power of
the regula-
tors.

SECT. VI. *And be it further enacted by the authority aforesaid,* That the regulators, so to be appointed as aforesaid for the said city, shall enter into a book all directions, orders and awards, by them made in pursuance of said act, and of this act, concerning the boundaries of any lot or land situated within the said city (such book to be provided for them by the commissioners for paving and cleansing the streets of the said city) and every such order and award, if made with reasonable notice before-hand to the parties interested therein, shall conclude and bind all persons, unless the same be set aside upon appeal as aforesaid ; and the said regulators of the said city shall in like manner enter in the same book all regulations, made by the said Justices and themselves, of descents, water courses, common sewers, and all other their proceedings and actings in their office as regulators.

SECT. VII. *Provided always,* That no person under age, *non compos mentis*, covert, imprisoned, or beyond sea, or any person who shall not have reasonable notice as aforesaid, shall be injured or affected by any proceeding, order, direction or award of the said regulators, so as the party and parties so disabled, or not noticed, enter and prosecute his, her and their appeal as aforesaid, within three years after coming to full age, sound memory, discoveriture, return from beyond sea, or, if within the United States, within one year after notice in writing shall be given of the order and award of the said regulators.

SECT. VIII. *And be it further enacted by the authority aforesaid,* That the said regulators, for their trouble in regulating and setting out the lines of any lot or piece of land, in pursuance of the said act, and of this act, and for entering their order and award concerning the same as aforesaid, shall be paid by the parties interested therein five shillings each, and no more ; and for surveying, regulating and laying out any streets, water courses and common sewers, the sum of ten shillings to each of them who shall be employed therein, for every day so employed ; to be paid by the commissioners for paving and cleansing the streets of said city, by an order on their Treasurer.

SECT. IX. *And be it further enacted by the authority aforesaid,* That the regulators of said city, together with their necessary assistants, may, at all seasonable hours, enter into or upon any lot or land within the said city, and survey and measure the same, in order to perform the service and duty required of them by virtue of this act.

SECT. X. *And be it further enacted by the authority aforesaid,* 1782.
 That the streets, lanes and alleys within the said city, heretofore
 opened for and dedicated to public use by private persons, and that
 all streets, lanes and alleys, which have been directed and laid out
 by the Supreme Executive Council, for the accommodation of the
 purchasers of the public lots within the said city, that have been or
 shall be sold, so far as the same are laid out through the said public
 lots, for the redemption of the bills of credit of this common-
 wealth, dated the twenty-ninth day of April, one thousand seven
 hundred and eighty, shall be considered and deemed highways,
 according to the records thereof remaining in the Surveyor-Gen-
 eral's office, as fully to all intents and purposes, as any highways
 laid out by order of the court of Quarter Sessions of any county
 within this state.

Streets &c.
declared
highways.

SECT. XI. And whereas in time past, from inattention and other-
 wise, divers buildings and fences have been erected within the said
 city, in such manner as to stand partly on the public streets and
 alleys thereof, and these nuisances, from tenderness to the posses-
 sors or owners of the adjoining freeholds, have been suffered to
 continue for many years, with design, that when such buildings
 should decay, the public ways which were so obstructed might be
 properly opened and extended: *Be it therefore enacted by the au-*
thority aforesaid, That no length of possession whatever of any
 part of any public street or way within the said city, so encroached
 upon, shall be available to bar or prevent the correction and removal
 of any nuisance by buildings, enclosure or otherwise, which have
 been or hereafter may be erected or made within or upon any street,
 lane or alley in the said city.

No length
of possession
to bar the
removal of
nuisances.

[SECT. XII. And whereas trees growing in the public streets,
 lanes and alleys, of the said city of Philadelphia, do obstruct the
 prospect and passage through the same, and also disturb and disorder
 the water courses and foot-ways, by the extending and increase
 of the roots thereof, and must tend to spread fires, when any break
 out within the said city: *Be it therefore enacted by the authority*
aforesaid, That all trees now growing, or which shall hereafter
 grow or be planted, within the streets, lanes and alleys of this city,
 shall be removed out of the same by the said commissioners; and
 that if any person or persons shall obstruct or hinder the removal of
 any trees as aforesaid, every person, so offending, shall respectively
 forfeit the sum of ten pounds, to be recovered on indictment, with
 costs, in the City Court, if the prosecution be commenced within
 six months after the offence, to the use of the said commissioners,
 to be by them applied to the paving and cleansing the streets of the
 said city.

Commission-
ers to
remove the
trees grow-
ing in the
streets.

Penalty if
they are
obstructed in
so doing.
[Repealed
post. pa. 54.]

SECT. XIII. And whereas the grates in the public streets of the
 city of Philadelphia over vaults are become very dangerous, by the
 manner of their constructions, and the owners neglecting to keep
 them in proper repair: For remedy whereof, *Be it enacted by the*
authority aforesaid, That, within three calendar months after the
 passing of this act, every owner or owners of vaults, over which a
 grate or grates are placed, shall cause the said grate or grates to
 be made of good iron bars, of one inch square, if eighteen inches

Regulations
respecting
grates over
vaults in
the streets.

1782. long, and so in proportion to the length of the bar, the said bar to be laid crossways of the street, and the space between the bars not to exceed one inch and a quarter of an inch; and the said grate or grates shall be fixed in a frame of stone, or good red cedar, the scantling of which to be at least six inches square for a bar of eighteen inches long, and so in proportion for the length of the bar, the frame to be laid solid on the wall of the opening of the said vault, and the upper side of the frame nearly level with the pavement, the wall of the opening, with the arch of the vault, and the grate or grates, always to be kept in good repair. And every owner, if a resident within the said city, or tenant of a non-resident owner, who has or may have vaults under any of the public streets, is hereby directed and enjoined to comply with the above regulations, under the penalty of thirty shillings, to be paid to the commissioners for pitching, paving and cleansing the streets, and by them to be applied towards making, amending and cleansing the same: And the said commissioners are hereby directed to make and amend such vaults or grates, which the owners neglect to repair agreeable to this act, out of the public money, and recover the expense thereof, with the forfeiture, of such resident owner or tenant of such non-resident owner, respectively, as the case may require, in a summary way, as debts under five pounds are usually recovered.

Tenants of non-resident owners repairing the grates, &c. may deduct the same out of the rent.

SECT. XIV. *And be it enacted by the authority aforesaid, That* if any tenant of a non-resident owner shall make or repair the vault, grate or grates, agreeable to this act, it shall be allowed to him by the owner or landlord out of the rent then due, or thereafter to become due. *Provided nevertheless, That* any grate or grates, which may at present appear safe and substantial, in the judgment of any two or more of the Justices of the peace for the city, with the said commissioners, or a majority of them, may be indulged therewith until they want repairing, or by said Justices and commissioners ordered otherwise.

No vaults to be dug, without leave first obtained.

SECT. XV. *And be it enacted by the authority aforesaid, That* no person or persons shall hereafter dig, or cause to be dug, any vault or vaults under any of the streets of the said city, without first obtaining liberty of four of the Justices of the peace for the city, with a majority of the regulators appointed by this act, who are hereby authorized to judge and determine on the necessity thereof, and the distance to be dug under any of the streets; provided the same does not exceed fifteen feet from the front wall of the dwelling, before which such vault is intended to be dug.

Passed 15th April 1782.—Recorded in Law Book No. I. page 531.

CHAPTER DCCCLXXVI.

An ACT to amend the several acts of this commonwealth, directing the mode of electing members of the General Assembly thereof.

SECT. 1. WHEREAS business of great consequence has been frequently delayed, and manifest injury thereby done to this commonwealth, by reason that persons elected to serve as members of

Assembly have not given their attendance, according to the constitution and laws of this state, and the time to which the House stood adjourned, or have been called by the Supreme Executive Council :

1782.

SECT. II. And whereas it is both just and necessary, that all persons elected as members of the General Assembly of this state should punctually attend their duty, or signify their refusal, so as the evils consequent on a want of representation may be provided against : Wherefore,

SECT. III. *Be it enacted, and it is hereby enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same,* That any person or persons, elected to serve in the General Assembly of the Representatives of the Freemen of this commonwealth, and duly notified thereof according to law, and who shall neglect or refuse to attend on the day fixed by the constitution for the legislative body to meet, or any member or members, who shall refuse or neglect to meet on the day, to which, by their own minutes, they may stand adjourned, or when called by the Supreme Executive Council, agreeable to the powers vested in them for that purpose, having at least fifteen days notice of such meeting, each and every person or member so refusing or neglecting shall forfeit and pay, for the use of this commonwealth, the sum of fifteen pounds, to be recovered, with costs of suit, in any court of record of the county where such person or persons so offending dwell or inhabit, and as herein after is directed.

Penalty on members refusing or neglecting to attend on the day fixed by the constitution.

SECT. IV. *Provided always,* That any person or persons, elected to serve in the General Assembly, and being duly notified thereof according to law, and who refuse or decline such service, shall give, or cause to be given, at his or their own proper expense and cost, to the House of Assembly, or the members met, a written notice, declaring and expressing therein his or their refusal, and within fifteen days after receiving notification as aforesaid, such person or persons shall not be deemed or held liable to any fine, forfeit or penalty, mentioned or intended by this act.

Proviso.

SECT. V. *And be it further enacted by the authority aforesaid,* That after the expiration of fifteen days from the time fixed and appointed for any meeting of the General Assembly of this commonwealth, the members then present shall cause a written list to be made out, and direct the Speaker, or a Chairman appointed for that purpose, to sign the same, containing the names of all such persons or members as are deemed delinquents under this act, and specifying the county where such delinquents reside, or were chosen to represent ; which list, so made out, and signed as aforesaid, they shall forthwith transmit to the Supreme Executive Council of this commonwealth, who are hereby enjoined and required to cause the Attorney-General, or some proper person or persons in his behalf, to sue for and recover, from each and every of the persons so offending, the fines, forfeitures or penalties, herein specially set forth, and pay the same into the treasury, for the use of the commonwealth.

After fifteen days, a list of delinquents to be made out and transmitted to the Supreme Executive Council.

1782.

The General Assembly may remit fines imposed under this act.

SECT. IV. *And be it further enacted by the authority aforesaid, That the General Assembly of this commonwealth may, by their order, remit any fine or fines recovered, or that may be recovered, or stay any suit or action depending by virtue of this act, or prevent, by their order, others being sued for, whenever it appears, from the necessity of the case, such remittance or stay of suit is just and reasonable.*

Passed 20th September, 1782.—Recorded in Law Book No. II. page 2.

CHAPTER DCCCCLXXIX.

An ACT to repeal a part of the act, entitled “An act to amend and render effectual an act, entitled “An act for regulating party walls and partition fences in the city of Philadelphia,” to declare divers new streets and ways opened, and to be opened and laid out, within the said city, to be highways, and also to declare nuisances by buildings within the said streets removable, and for other purposes therein mentioned.”

SECT. I. **WHEREAS** a considerable number of the inhabitants of the city of Philadelphia have, by their petition, set forth, that trees planted in the streets thereof conduce much to the health of the inhabitants, and are in other respects of great public utility : And whereas the said inhabitants pray, that so much of the act, entitled “An act to amend and render effectual an act, entitled “An act for regulating party walls and partition fences in the city of Philadelphia, to declare divers new streets and ways opened, and to be opened and laid out, within the said city, to be highways, and also to declare nuisances by buildings within the said streets removable, and for other purposes therein mentioned,” and which directs the removal of all trees out of the streets, lanes and alleys of the said city, may be repealed :

SECT. II. *Be it therefore enacted, and it is hereby enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same, That from and after the passing of this act, the twelfth section of the above recited act, and every matter and thing therein contained, be, and the same is hereby, repealed and made void.*

Passed 20th September, 1782.—Recorded in Law Book No. II. page 10.

CHAPTER DCCCCLXXX.

An ACT to enable the commissioners therein named to purchase public landings in the district of Southwark, in the county of Philadelphia, and for raising a fund to pay the purchase money thereof. (b)

SECT. I. **WHEREAS** the rapid improvement of the water lots in the district of Southwark, of late years, hath rendered them of great value, and unless timely care is taken to procure convenient

(b) See ante. chap. 970, pa. 44, and the various acts relating to Southwark there referred to. The surviving commissioners were authorized to execute this law by an act of the 6th of March, 1790, chap. 1479. (Note to former Editor.) See also, ante. vol. 1, pa. 248, chap. 431.

Part of a former act repealed. [Ante. page 31, chap. 971,].

places for public landings, for the unlading of hay, wood, boards, timber, sand and stone, and other bulky and heavy articles, brought into the same by water for the use of the inhabitants, the public may in time be deprived of the benefit of access to the water for such purposes, to their great injury, by increasing their land carriage : And whereas the inhabitants of the said district, fearing those inconveniences, have for several years past been endeavouring to procure some proper and convenient lots for those purposes, and have applied to the legislature to enable them to purchase and hold such lots, and have, by Robert Knox, Joseph Blewer, Joseph Turner, John Brown, William Clifton and Isaac Penrose, a committee by them for that purpose appointed, agreed with Luke Morris, and others, for the purchase of one convenient place for that purpose, if they can be enabled to fulfil the contract on their part, and other places will in time be wanted for the like purposes.

SECT. II. Now, therefore, to enable the said committee to fulfil their said contract, and to purchase such other lots as shall hereafter appear to be necessary for public landings in the said district, and which can be procured, *Be it enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same,* That the said Robert Knox, Joseph Blewer, Joseph Turner, John Brown, William Clifton and Isaac Penrose, or their survivors, together with the supervisors, of the highways for the time being, elected by the inhabitants of the said district, in pursuance of the act of Assembly in such case provided, be, and they are hereby, appointed commissioners, and, by and with the approbation of three of the Justices of the peace of and for the county of Philadelphia, they are hereby authorized and empowered, for and in behalf of the inhabitants of the said district, and for their use, to purchase or to take on ground-rent, such lot or lots on the river Delaware, within the said district, as they, the said commissioners, or a majority of them, shall think will be necessary for accommodating the said inhabitants with public landing-places for such bulky articles as are herein before mentioned, and to take one or more conveyances to them for the same, in fee-simple, and thereupon to sink and erect proper and convenient wharves and quays, for the purposes aforesaid, and to borrow on interest, from time to time, as the purchase monies and expenses of improving the same shall grow due, such sum or sums of money, as shall be sufficient to discharge their contracts, and to grant, bargain, sell, convey and assure to the lenders, in mortgage, all such lot or lots of ground ; which deeds of mortgage, executed by the said commissioners, or their survivors, or a majority of them, shall be as good and valid in law, for securing the payment of the monies so borrowed, as any mortgage made by a private person of his own estate now is.

SECT. III. *And be it further enacted by the authority aforesaid,* That whenever the said commissioners shall have purchased any lot or lots for the purposes aforesaid, they shall cause the same (or so much thereof as they shall think necessary) to be laid out for a land-

Commissioners appointed to purchase a lot or lots, for the accommodation of Southwark with proper landings.

Commissioners to lay out landing places ;

1782. ing or landings, and a street of sufficient breadth to give free access thereto, for public use ; and if there shall be any overplus ground, then it shall and may be lawful for them, or a majority of them, or their survivors to sell the said overplus ground by public or private sale, for the best prices that can be obtained, and make good and perfect titles for the same to the purchasers, in fee-simple, and apply the monies arising from such sales towards the payment of the first purchase money, or the monies they may have borrowed as aforesaid.

let out the
wharves ;

establish
tolls ;

and receive
the rents.

SECT. IV. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful for the said commissioners, or a majority of them, to demise, grant, and to farm let, to any person or persons whatsoever, for any term of years, not exceeding seven at one time, all the public wharves, quays and landing places, reserving such rents and conditions, and establishing such rates and prices, for the toll or wharfrage of all kinds of articles which are usually brought to such landings, as they shall judge reasonable, and restraining the tenant from taking higher rates and prices, and binding him, in sufficient penalties, in all things to abide by such rates, orders and regulations, as the tenants of the public landings in the city of Philadelphia are bound to observe ; and to receive the rents, issues and profits thereof, and to apply the same towards the discharge of the incumbrances on the said lots, until the whole of the incumbrances aforesaid are fully paid and discharged.

Commis-
sioners, &c.
to lay a
yearly rate
or assess-
ment, not
exceeding
one shilling
in the
pound.

SECT. V. *And, in order to enable the said commissioners more speedily to pay off and discharge the debts which shall accrue by the purchase and improvement, as well of the said landing place in part agreed for with the said Luke Morris, and others, as of any other landing places hereafter to be purchased, Be it enacted by the authority aforesaid,* That it shall and may be lawful for the said commissioners, or a majority of them, or their survivors, together with the assessor and assistant freeholders of the said district for the time being, to make or lay, yearly and every year, until the whole of the said debts and incumbrances shall be paid and discharged, one rate or assessment, not exceeding one shilling in the pound, of the clear yearly value of all the real and personal estates within the said district (over and above the rates and assessment which the said supervisors are directed to lay, by the said act of Assembly, for the maintenance and repair of the streets and highways within the said district) and to appoint a collector for the same : which said assessment being fairly made, according to the best of their skill and judgment, having due regard to every man's estate within the said district, and without fear, favour or affection, of or to any person, shall be fairly transcribed in a book to be kept by the said assessor and commissioners, and, being approved by three Justices of the peace of and for the said county, a fair transcript or duplicate thereof shall be delivered to the collector, by them to be appointed from among the inhabitants of the said district, who is hereby authorized, enjoined and required to receive, collect, levy and recover, the said rate and assessment, in the same

manner and form, and by the same legal remedies, which are by law appointed for recovering and collecting the county taxes in the said district; and having received or collected the same, or any part of them, shall, at the end of every month from the time of his appointment (or when thereto required,) account with and pay to one of the commissioners, to be by them, or a majority of them, chosen as their Treasurer, all such sums of money, part of the said assessment, which he shall so have collected during the preceding month, deducting only thereout six-pence in the pound for his time and trouble.

SECT. VI. *And be it further enacted by the authority aforesaid,* That if any person, by the said commissioners, or a majority of them, appointed to the office of collector aforesaid, shall refuse to take the same (not being disqualified nor entitled to an exemption therefrom, according to the customs in such cases used and approved,) he shall forfeit and pay to the Treasurer ten pounds, to be recovered by an action of debt, brought in the name of the Treasurer for the time being, in any court of record within this commonwealth, wherein the plaintiff shall declare in general terms, that the defendant was duly appointed collector of the taxes imposed by the commissioners for the purchase of public landings for the district of Southwark, and that he refused to undertake the office, whereby action accrued; and the defendant shall plead the general issue, and shall be allowed to give this act and any special matter arising thereupon in evidence, but shall not be allowed wager of law, protection, nor more than one imparlance. And if such person so appointed collector shall undertake the office, but shall neglect or refuse, at the end of every month (or when thereto required) to account with and pay to the Treasurer for the time being, all such monies as he shall have from time to time collected of the said assessment, in manner aforesaid, then, upon complaint made to two Justices of the peace of and for the said county, it shall and may be lawful for the said Justices, and they are hereby required to issue their precept, directed to the sheriff of the said county, commanding him to take and bring the body of the said collector before them, to answer such complaint; and if, upon his appearance, and due examination had into the said complaint, it shall appear to them that the said collector has refused to account with and pay the said monies to the said Treasurer, and shall before them neglect or refuse immediately so to do, then, and in such case, the said Justices are hereby required, by warrant under their hands and seals, forthwith him to commit to the common gaol of the said county, there to remain, without bail or mainprize, until he shall so account for and pay the said monies to the said Treasurer; and in such case, or in case the person appointed to be collector shall refuse to undertake the office, it shall and may be lawful for the said commissioners to appoint another, under the penalties aforesaid, and so as often as there shall be occasion.

Penalty on persons refusing to serve the office of Collector, &c.

SECT. VII. *And be it further enacted by the authority aforesaid,* That the Treasurer of the said commissioners, before he undertake his office, shall give a bond with two sufficient sureties, to

Treasurer to give bond for the faithful

1782.
 {
 performance
 of his
 trust.

the other commissioners, in the penalty of one thousand pounds, conditioned, that he will well and faithfully execute his office, keep regular accounts of his receipts and disbursements, pay all the orders drawn on him by the said commissioners, or a majority of them, or their survivors, as soon as sufficient monies shall come to his hands from any of the funds belonging to the commissioners; that he will, at least once in every year, settle and adjust with the said commissioners a full and just account, supported by proper vouchers, of all his receipts and payments during the preceding year; and that upon his death, or the appointment of another Treasurer in his room (which the said commissioners or a majority of them, or their survivors, are hereby authorized to do, whenever they see cause,) he, his executors or administrators, shall and will settle and adjust all his accounts with the said commissioners, and pay the remaining balance in his hands to his successor in office, charging no more than six-pence in the pound on all the monies by him received and paid.

Two thirds
 of the com-
 missioners
 to make a
 board.

SECT. VIII. *And be it further enacted by the authority aforesaid,* That the said commissioners shall meet at some convenient place, by them to be fixed on, so often as the business under their care shall require, when two thirds of their number being met, shall constitute a board, a majority of whose voices shall be sufficient to determine any question that may arise or be made, touching or concerning any of the matters or things hereby committed to their care.

Estate in
 said lots
 vested in
 the com-
 missioners
 until all in-
 cumbrances
 are dis-
 charged,
 and then to
 devolve to
 the supervi-
 sors of the
 highways,
 who are
 erected into
 a corpora-
 tion, for the
 purposes of
 the trust.

SECT. IX. *And be it further enacted by the authority aforesaid,* That all and singular the powers and authorities hereby given to the said commissioners, and the estate and estates which they shall acquire in any lots of ground, by virtue of and in pursuance of this act, shall continue and remain in the said Robert Knox, Joseph Blewer, Joseph Turner, John Brown, William Clifton and Isaac Penrose, and the survivors of them, and the supervisors of the highways for the time being, until the said landings are purchased and improved, and until the whole debts accrued by the purchase and improvement thereof are, by the sale of any parts of the grounds purchased, the rents and profits of the landings, and the rates and assessments hereby ordered to be laid and collected, or by some other means, fully paid off and discharged, and until their accounts of and concerning the same are finally adjusted, and no longer; and then and from thenceforth the real estate of and in the same shall devolve upon and accrue to the supervisors of the highways in the said district, who are hereby erected into and declared to be one body politic and corporate (for this especial purpose) in deed and in law, capable of holding the same, and of suing and being sued, in all actions touching and concerning the same, by the name of "The Supervisors of the public landings and highways in the district of Southwark," and to their successors forever, in trust for the use of the public, in the manner herein after mentioned, that is to say; in trust that the said supervisors for the time being, or a majority of them, with the approbation of three Justices of the peace of and for the said county, shall and may grant, demise, and to farm let, the same landings to any person or persons, for any term of years, not exceeding seven at one time,

upon such rents and conditions as they shall think proper ; and shall and may make such rules, orders and regulations, for the well governing as well the tenants thereof, as the boats, flats, carts and waggons, which shall frequent the same, and the owners, skippers and drivers thereof, and the prices or rates of toll or wharfage, to be paid for all articles to be unladen thereon ; and that the said supervisors shall receive the rents, issues and profits thereof, and apply the same to the making any improvements or buildings thereon, to the paving any of the streets, or maintaining and repairing any of the highways, or to any other public use, within the said district, which the said supervisors, or a majority of them, by and with the approbation of three Justices of the said county, as aforesaid, shall order and appoint.

1782.

SECT. x. And whereas the number of supervisors within the said district, directed to be chosen by the freeholders and inhabitants by the act of assembly in such case provided, will be too small, when this weighty trust shall wholly devolve on them, *Be it therefore enacted by the authority aforesaid,* That at the first election which shall be held for the said district, after the accounts of the said commissioners shall be finally adjusted, the freeholders and inhabitants of the said district shall elect six respectable freeholders to be the supervisors of the public landings and highways in the district of Southwark, in lieu of the three supervisors of the streets and highways, by the said act directed to be chosen ; which six freeholders, being duly elected according to the directions of the said act, shall have, hold, enjoy and exercise, all the powers, authorities and estates, by this act vested in the supervisors of the public landings and highways in the district of Southwark.

Three additional supervisors of the highways to be chosen.

Passed 20th September, 1782.—Recorded in Law Book No. 2. page 12.

CHAPTER DCCCCLXXXI.

An ACT for incorporating the Presbyterian church, in the township of Warwick, in the county of Bucks.

Passed 20th September, 1782.—Private Act.—Recorded in Law Book No. II page 17.

CHAPTER DCCCCLXXXII.

An ACT for incorporating the Dutch reformed church in the townships of Northampton and Southampton, in the county of Bucks.

Passed 20th September, 1782.—Private Act.—Recorded in Law Book No. II page 21.

A C T S

OF THE

General Assembly of Pennsylvania,

Passed in the seventh General Assembly—the first Session of which commenced October 28th, and ended December 4th, 1782. The second commenced January 15th, and ended March 22d, 1783.—And the third commenced August 14th, and ended September 26th, 1783.

1782.

FREDERICK AUGUSTUS MUHLENBERG, *SPEAKER*.

CHAPTER DCCCCLXXXIX.

An ACT to prevent the erecting any new and independent state within the limits of this commonwealth.

SECT. I. **WHEREAS**, by the separation of the thirteen United States from Great-Britain, the commonwealth of Pennsylvania hath become a sovereign and independent state, and, in consequence of such separation, a government, established solely on the authority of the people, hath been formed ; and it being evident that every county hath, by the constitution, or by laws enacted for that purpose, an incontestible right to send deputies to represent them in the General Assembly, and that they have exercised that right, they being now actually represented in this House ; therefore all the inhabitants of this commonwealth, as they are under the protection of its laws, are bound by and do owe allegiance thereto :

SECT. II. And whereas great exertions have been made for the defence of the frontiers, and large sums expended therein, notwithstanding the embarrassments and difficulties under which the commonwealth hath and still doth labour in its finances :

SECT. III. And whereas this commonwealth is indebted to the late Proprietaries of Pennsylvania in a large sum of money, payable at the end of the war, and each and every county ought to contribute its just part or proportion for that end, and the unlocated lands

within this state are and always have been considered a valuable fund towards paying and discharging the said debt : (c) 1782.

SECT. IV. And whereas, notwithstanding the premises, this House hath received information that divers ill disposed persons setting at naught every principle of public virtue, and pursuing their ambitious and interested views, have caused great uneasiness among the good people of this state, by manifesting the most criminal design of setting up a distinct state or government within this commonwealth :

SECT. V. *Be it therefore enacted, and it is hereby enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same,* That if any person or persons shall erect or form, or shall endeavour to erect or form, any new and independent government, within the boundaries of this commonwealth, as described in the charter, and settled between this state and the state of Virginia, such person or persons, being thereof legally convicted in any court of Oyer and Terminer, shall be adjudged guilty of high treason.

SECT. VI. *And be it further enacted by the authority aforesaid,* That if any person or persons shall set up any notice, written or printed, calling or requesting the people to meet together for the design or purpose of forming a new and independent government as aforesaid, such person or persons, and all others who shall assemble themselves for that purpose, in consequence of such notice, shall be adjudged guilty of high treason.

SECT. VII. *And be it further enacted by the authority aforesaid,* That if any person or persons, at any meeting of the people convened for the purpose aforesaid, or for any other purpose, shall maliciously and advisedly recommend or desire them to erect or form any new government in any part of this state, independent of the present, or shall read to them any new form of a constitution, with design to induce them to adopt the same as a new and independent constitution, every such person or persons, being thereof legally convicted, shall be adjudged guilty of high treason.*

SECT. VIII. *Provided always, and be it further enacted by the authority aforesaid,* That nothing contained in this act shall extend, or be construed to extend, to the dispute now subsisting between the state of Pennsylvania and the state of Connecticut, respecting their limits, boundaries or jurisdiction. (d)

[SECT. IX. *And be it further enacted by the authority aforesaid,* That if any person or persons shall commit any offence against this act, every such offender shall be tried in any county within this commonwealth, if the Supreme Executive Council shall think proper to order and direct said trial to be had in any other county, than that in which the offence may have been committed.†

(c) Provision was finally made for paying this debt by an act of the 9th of April, 1791. (Note to former &c.)
(d) This dispute was settled in favour of Pennsylvania, by a decree pronounced by the commissioners appointed in pursuance of the 9th article of the confederation, at Trenton, on the 30th of December, 1782. (Note to former edition.)

Persons erecting or attempting to erect any new government within this commonwealth, declared guilty of high treason;

or noticing the inhabitants to meet for that purpose;

or advising the same at any meeting of the people.

[* See the constitution of the United States. Art. 4, sect. 3.]

Proviso respecting the dispute between Pennsylvania and Connecticut.

Offenders against this act may be tried in any county within this commonwealth. [† Repealed Aug. (31st, 1785, chap. 1157.]

1782.

Penalty for
offending
against this
act.

SECT. X. *And be it further enacted by the authority aforesaid,* That any person or persons, who shall offend against this act, and shall be thereof legally convicted, by the evidence of two sufficient witnesses, in any court of Oyer and Terminer within this commonwealth, he or they shall be adjudged guilty of high treason, and shall suffer death ; and his or their estate is hereby declared to be forfeited to this commonwealth.

Council en-
abled to call
out the mili-
tia to sup-
press offen-
ces against
this act.

SECT. XI. *And in order the more effectually to prevent the mischiefs, which this act is intended to guard against and remedy, Be it enacted by the authority aforesaid,* That the Supreme Executive Council shall be, and they are hereby, enabled to call out the militia of such counties, as they may think necessary to prevent or suppress any attempts to set up a new and independent government, in any county or counties within the boundaries of this commonwealth, as above mentioned.

Passed 31 December, 1782.—Recorded in Law Book No. II. pa. 33.

(c) Respecting high treason in general, see ante. vol. I. pa. 435, chap. 729, and the notes thereto subjoined.

CHAPTER DCCCCXCVI.

An ACT for the sale of certain lands therein mentioned, for the purpose of redeeming and paying off the certificates of depreciation given to the officers and soldiers of the Pennsylvania line, or their representatives ; and for appropriating certain other lands therein mentioned for the use of the said officers and soldiers, to be divided off to them severally at the end of the war. (f)

SECT. I. WHEREAS it was enacted by a law of this commonwealth, passed the eighteenth day of December, in the year of our Lord one thousand seven hundred and eighty, entitled “An act to settle and adjust the accounts of the troops of this state, in the service of the United States, and for other purposes therein mentioned,” That the certificates of depreciation given to the officers and soldiers of the Pennsylvania line should be receivable at the Land-Office of this state, equal to gold and silver, in the payment of the purchase money of unlocated lands, if the possessor or possessors of the same should think proper to purchase such lands.

Description
of the land
appropriated
for the

SECT. II. *Be it therefore enacted, and it is hereby enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General assembly met, and by the authority of the same,* That for the more speedy and effectual complying with the intentions of the law aforesaid, there be, and hereby is, located and laid off a certain tract of land, as follows ; beginning where the western

(f) By an act of the 24th of March, 1785, the mode of distributing the donation lands mentioned in the fifth section was prescribed ; by an act of the 11th of September, 1787, the Executive was directed to lay out a town, and

sell the lots in the first reserved tract ; and by an act of the 28th of Sept. 1791, the Governor was directed to lay out a town, and sell the lots in the second reserved tract, mentioned in the second section of this act. (Note to former edit.)

boundary of this state crosses the Ohio river: thence up the said river to Fort-Pitt; thence up the Allegheny river to the mouth of Mogulbughtiton creek; thence by a west line to the western boundary of this state; thence south by the said boundary to the place of beginning; reserving to the use of the state three thousand acres, in an oblong of not less than one mile in depth from the Allegheny and Ohio rivers, and extending up and down the said rivers, from opposite Fort Pitt, so far as may be necessary to include the same; and the further quantity of three thousand acres on the Ohio, and on both sides of the mouth of Beaver creek, including Fort Mackintosh;* all which remaining tract of land, as aforesaid, is hereby appropriated as a farther fund for the purpose of redeeming the certificates aforesaid, and shall, for that purpose, be laid out and disposed of as follows; that is to say, the Surveyor-General of this state shall, according to such directions as may be given to him by the Supreme Executive Council, cause the aforesaid tract of land to be laid out into lots of not less than two hundred acres, nor more than three hundred and fifty acres each, numbering the same lots numerically on the draught or plot of the country aforesaid; and shall, as soon as the same, or one hundred lots thereof, are surveyed, together with the Secretary of the Land-Office and the Receiver-General, proceed to sell the same lots in numerical order, at such times and places, and under such regulations, as shall be appointed by the Supreme Executive Council; the full consideration bid at such sales shall be paid into the Receiver-General's office, either in gold or silver, or in the certificates aforesaid; upon full payment of which consideration, and the expense of surveying, together with all fees of the different offices, patents shall be issued in the usual form to the several buyers or vendees; and the different sums in specie that may be paid into the Receiver-General's office, shall be paid over by him to the treasury of this state, for the purpose of redeeming such certificates as may remain unsatisfied at the end of such sales.

1782.
redemption
of the de
preciation
certificates.

*See title
Beaver
County in
the General
Index.

SECT. III. *And be it further enacted by the authority aforesaid,* That the allowance or pay for laying out and returning into the Surveyor-General's office the lands herein directed to be laid out and sold, including wages to chain-bearers and markers, and all other expenses incurred in laying out and returning the same for each lot, shall be the sum of three pounds ten shillings, which shall be paid in specie by the owners or purchasers of said lot or lots, before a patent shall be issued for the same.

Allowance
for laying
out the lots.

SECT. IV. And whereas the General Assembly of this commonwealth did, by their resolve of the seventh day of March, in the year of our Lord, one thousand seven hundred and eighty, promise to the officers and privates belonging to this state, in the federal army, certain donations and quantities of land, according to their several ranks, as therein set forth, to be surveyed and divided off to them severally at the end of the war:

SECT. V. *Be it enacted by the authority aforesaid,* That for the purpose of effectually complying with the letter and intention of said resolve, there be, and it is hereby declared to be located and laid off, a certain tract of country, beginning at the mouth of

Benalla
district ap-
propriated,
in pursuance
of the resolve
of the 7th

1783. *Mogulboughton creek; thence up the Allegheny river to the mouth of Cagnawaga creek; thence due north to the northern boundary of this state; thence west, by the said boundary, to the north-west corner of the state; thence south, by the western boundary of the state, to the north-west corner of lands appropriated by this act for discharging the certificates herein mentioned; and thence by the same lands east to the place of beginning; which said tract of country shall be reserved and set apart for the only and sole use of fulfilling and carrying into execution the said resolve. (g)*

March,
1780.
[See vol. I.
chap. 869,
sect. 7.]

Former im-
provements
on the ap-
propriated
district
null and
void.

SECT. VI. *And be it further enacted by the authority aforesaid,* That no improvement, location, warrant, grant, right, title or claim, whatsoever, made or procured by, from, or under any Indian nation, or nations of Indians, the late Proprietaries, or any other person or persons whatsoever, for or upon the lands contained within the limits of the two above described tracts of country or any part thereof, shall be valid, or of any effect, in law or equity, but the same shall be null and void, to all intents and purposes whatsoever.

Officers and
privates,
entitled to
land, to
make appli-
cation with-
in two
years after
peace.

SECT. VII. *And be it further enacted by the authority aforesaid,* That all officers and private men entitled to land as aforesaid shall, and they are hereby directed to make their respective applications for the same within two years after peace shall be declared; (h) and should any of the said officers, non-commissioned officers, or private men, die before their respective applications shall be made, as before directed, then their heirs, executors or administrators, respectively, are hereby permitted to make such applications within one year after the expiration of the aforesaid time; and in case the said officers, non-commissioned officers, and private men, their heirs, executors or administrators, shall neglect so to do within the times limited as aforesaid, then, and in such cases, it shall and may be lawful for any person or persons whatsoever to apply to the Land-Office, locate and take up such parts or parcels of said lands, upon such terms as the Legislature shall hereafter direct; as may remain unlocated by the said officers, non-commissioned officers, and private men, their heirs, executors and administrators.

Officers, &c.
not to sell
their shares
of land, until
actually
surveyed.

SECT. VIII. *Provided always, and be it further enacted by the authority aforesaid,* That it shall not be in the power of the non-commissioned officers and private men or any of them, to grant, bargain or sell his or their share of the land hereby appropriated for their use, or any part thereof, until the same shall be actually surveyed and laid off, as aforesaid, and that every such sale or conveyance shall be absolutely null and void, to all intents and purposes.

Passed 12th March, 1783.—Recorded in Law Book No. II. page 46.

(g) The mode of distributing the donation lands declared by an act of the 24th of March, 1785. (*Note to former location.*)

(h) The period allowed for application has been extended by various acts, and by an act of the 6th of April,

1792, the officers of the Land-Office were directed to draw for those who had not applied; but the lands so drawn, which should remain unapplied for after the term of two years, are directed to be disposed of. See, likewise, the acts of the 13th day of Sep-

tember, 1791, and the 10th day of the state. See also the title *Donation* 1783.
 April, 1792, for the relief of the pa- *land* in the index. (*Note to former edi-*
 tees in the 10th district, which was *tion*)
 found to be out of the jurisdiction of

CHAPTER DCCCCXCIX.

An ACT incorporating the Presbyterian congregation of Newtown, in the county of Bucks.

Passed 12th March, 1783.—Private Act.—Recorded in Law Book No. II. page 51.

CHAPTER MV.

An addition and supplement to an act, entitled "An act for amending and continuing an act, entitled "An act for the support of the government of this province, making the excise on wine, rum, brandy, and other spirits, more equal, and preventing frauds in the collecting and paying the said excise." (i)

SECT. XXII. *AND be it further enacted by the authority aforesaid, That, from and after the passing of this act, the rates of all tavern licences, exclusive of the fees of office, shall be double the sum at which they have been by law charged hitherto; and the clerks of the courts of Quarter Sessions are hereby enjoined and required to receive, from every person who shall be recommended as the law directs to keep a public house, a sum for every licence for that purpose, equal to double the sum which all such licences have been respectively rated at by law in the city of Philadelphia and the several counties of this state, and shall account for and pay over all such sums by them received, in the manner directed heretofore by law for receiving and paying over the same, any thing in any law heretofore made in anywise notwithstanding.*

Rates of tavern licences to be double the sum at which they have been charged by law.

SECT. XXIII. *And be it further enacted by the authority aforesaid, That if any person or persons shall hereafter retail and sell less than one quart of rum, wine, brandy, or other spirits, to be delivered at one time and to one person, without having first obtained licence agreeable to law for that purpose, he, she or they shall forfeit and pay, for every such offence, the penalty of ten pounds, over and above the excise for all such liquors by them retailed as afore-*

Penalty on retailing less than one quart without licence.

(i) All the sections of this act, but those which are here printed, relate merely to the collection of the excise; and by an act of the 21st of September, 1791, (chap. 1571,) it is declared, that so much of every act or acts of Assembly, as authorize the collection of any duty or duties upon wine, &c. shall be, and are, repealed. The original act was passed on the 21st day of March, 1772; additional duties were laid by an act of the 20th of March, 1783; and an act to enforce, among other things, the collection of monies due for excise, was passed on the 9th of December, 1783. For the act regulating tavern licences, see chap. 1752, and for a general reference to all the laws respecting tavern licences, see chap. 172, and the note there subjoined, ante. vol. I. page 74. (*Note to former edition.*)

1783. said, or be committed to the work-house or prison of the respective county where the offence shall be committed, there to be kept at hard labour for the space of three months, any thing in this law, or any other law to the contrary notwithstanding.

Part of the
former law
repealed.

SECT. XXIV. *And be it further enacted by the authority aforesaid,* That so much of the act, to which this is an addition and supplement, as is altered, supplied or amended by this act, be, and the same is hereby, repealed and made void, any thing contained in any of the said laws, in anywise notwithstanding.

Passed 19th March, 1783.—Recorded in Law Book No. II. page 61.

CHAPTER MXII.

An ACT for preventing vexatious prosecutions and suits against such as acted in this state, for the defence of the liberties of America.

SECT. I. WHEREAS divers virtuous citizens of this state, and other good people, well affected to their country, at an early period of the present war with Great Britain for the liberties and independence of the United States of America, have at the risque of their lives and fortunes, acted in conformity to and carried into execution several resolutions, recommendations, votes and orders of Congress, and of the Assemblies, Conventions, Committees, and other public bodies within this state, and also as civil and military officers, and in obedience to them, though perhaps in some cases not sufficiently authorized thereunto, in which proceedings some force and violence, and defect of form, was unavoidable, which in a time of peace and common safety would not have been warrantable; and also since the declaration of independence and the establishment of the present government, by reason of the wars and troubles raised and occasioned by our foreign and domestic enemies, divers like matters and things have been acted and done, all which were necessary and allowable in regard of the exigence of public affairs, and ought to be justified, and the parties concerned therein indemnified; nevertheless, some persons, ill affected to the present happy government, and the safety and welfare of their country, have commenced and prosecuted, and threaten to commence and prosecute, actions and suits against the good citizens, for and by reason of their actings and doings aforesaid: Therefore, for the preventing the troubles and charges which the said virtuous citizens might be put to, by means of such vexatious suits and prosecutions, and for their indemnity in the premises.

SECT. II. *Be it enacted, and it is hereby enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same,* That all personal actions, suits, indictments, informations, and all other prosecutions, whatsoever, for or by reason of any act, matter or thing done or performed by any Assembly, Convention, Committee, or other public body within this state, or in obedience to any ordinance, vote, resolution, recommendation, order or advice of Congress,

Personal
actions,
suits &c.
for any
thing done
or performed
by reason of
the premises,
hereby made
void.

or of any of the Assemblies, Conventions, Committees, or other public bodies aforesaid, or of any commanding officer, civil or military, or otherwise, for or by reason of the premises, be, and are hereby, discharged and made void : And if any action or suit, hereby declared to be discharged, hath been or shall be commenced or prosecuted, every person so sued may plead the general issue, and give this act and the special matter in evidence ; and if the plaintiff shall become non-suit or forbear further prosecution, or suffer discontinuance, or if a verdict or judgment pass against him, the said defendants shall recover treble costs, for which he shall have the like remedy, as in cases where costs by law are given to defendants ; and the said plaintiff or prosecutor shall moreover forfeit and pay the fine of ten pounds, to the use of the county where the said defendant shall be arrested or sued, to be recovered, as aforesaid, in the name of the said defendant.

1783.

SECT. III. *And be it further enacted by the authority aforesaid,* That this act, and the general sentences and words before mentioned, shall be reputed, taken, expounded and adjudged, in all courts, and elsewhere, most beneficial and available to all and singular the good people, who may be sued for or by reason of any act or thing done or performed as aforesaid.

This act to be expounded most beneficially for those who may be sued.

Passed 21st March, 1783.—Recorded in Law Book No. II. page 92.

CHAPTER MXIV.

*An ACT to repeal part of an act of the Assembly of the late province of Pennsylvania, entitled “ An act declaring the river Susquehanna, and other streams therein mentioned, public highways, for improving the navigation of the said river and streams, and preserving the fish in the same.”**

[* Original act, ante vol. I. p. 324, chap. 627.]

SECT. I. WHEREAS John Wilt, of the county of Bedford, did, by petition to the late House of Assembly of this commonwealth, set forth, that great benefit and utility would accrue to the majority of the inhabitants of the said county, from erecting a fulling-mill about two miles below the town of Bedford, in said county, on the Ray's-Town branch of the river Juniata, and in consideration thereof prayed that an act might be passed, to permit him, the said John Wilt, to erect a mill as aforesaid.

SECT. II. And whereas the said House of Assembly did, on the twenty-third day of November, in the year one thousand seven hundred and eighty-one, give leave to the said John Wilt to bring in a bill, agreeable to the prayer of his said petition, having first advertised, in the county of Bedford, his intentions so to do : And whereas it appears by the petition of the said John Wilt, and a certificate produced therewith to this House, that he hath complied with the above mentioned order :

SECT. III. *Be it therefore enacted, and it is hereby enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same,* That so much of the aforesaid act, entitled “ An Act declaring the

Repeal of the act, so far as

1783. river Susquehanna, and other streams therein mentioned, public highways, for improving the navigation of the said river and streams, and preserving the fish in the same," as declares the Ray's-Town branch of Juniata, from the lower end or limits of the said John Wilt his plantation up to the said town of Bedford, to be a public highway, shall be and the same is hereby, repealed and made void, any thing in the act above mentioned to the contrary notwithstanding.

it declares
a certain
part of
Ray's-
Town branch
of Juniata to
be a high-
way.

Passed 21st March, 1783.—Recorded in Law Book No. II. pa. 95.

CHAPTER MXV.

An ACT for building market-houses, and keeping a public market, on both sides of Callowhill-street and New-Market-street, in the Northern-Liberties of the city of Philadelphia. (k)

SECT. I. WHEREAS the late Proprietaries of Pennsylvania, at the laying out and surveying a number of town lots at a place called Callowhill, between Front and Second-streets, in the Northern-Liberties of the city of Philadelphia; did, for the encouragement of the people who would build on and improve these and other their lots of land in the neighbourhood thereof, leave open and design for a public market an oblong piece of ground, northward and southward one hundred and thirty feet, and eastward and westward two hundred and ten feet, crossed in its middle by two streets, one running eastward and westward, called Callowhill-street, the other northward and southward, called New-Market-street, each of the said streets being of the breadth of fifty feet, and intersecting one another.

SECT. II. And whereas a considerable number of the same lots, and of lots in the adjacent suburbs, particularly towards the Delaware, have been built over or otherwise improved, ship-building, commerce, and other business and occupations, are carried on above and below the said market-place, and by establishing the new ferry at the wharf of Callowhill-street, these parts of the town are much resorted to by the people of New-Jersey, and others; and a great number of the freeholders and inhabitants of the upper part of the city of Philadelphia, and of the Northern-Liberties thereof, have, by their petition, represented to the General Assembly of this commonwealth, that they labour under many difficulties, by reason of their distance from the public market kept in the city; that the aforesaid Callowhill market-place is very convenient for the accommodation of the house-keepers in that district; and have offered to build stalls by subscription, without any charge to the public; and that, after all costs of the buildings are paid and satisfied, all the profits and income of the said market shall be appropriated to the benefit of the Northern-Liberties, and have humbly prayed this House to pass a law for that purpose;

(k) See a supplement to this act, For a general reference to the laws passed the 31st of August, 1785, and respecting the Northern Liberties, see an act passed the 18th of March, 1789. the general Index. (Note to former ed.)

SECT. III. *Be it therefore enacted, and it is hereby enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same,* That, from and after the publication of this act, the aforesaid oblong shall be and remain, and it is hereby declared to be and remain, for ever, a public market-place, for the buying and selling of all sorts of provisions, victuals, and things of the country produce and manufacture, on every day of the week, except Sunday, and that all manner of persons shall have liberty to expose to sale their country produce on such stalls, booths, or other stands, as shall be assigned to them by the clerk of the market within or near the said market-place, they paying a reasonable toll, or such as is accustomed to be taken in the city of Philadelphia.

1783.

Market-place constituted, and market days appointed.

SECT. IV. And in order that the said market may be built, and the monies necessary for the doing of it raised and collected, *Be it further enacted by the authority aforesaid,* That Isaac Coats, David Rose, George Forepaugh, George Leib, Peter Brown, and John Britton, shall be superintendants of the said market, and shall have power to take subscriptions, in the way either of loan or donation, for the building market-houses, and for paving New-Market-street, from Cable-lane as far as Margarett-street, and the said Callowhill-street, from Second-street to Front-street; for purchasing or making moveable booths or stands, copper or brass standards of weights and measures, and other things necessary for the keeping a market: And in order that such subscription monies may be actually paid, when occasion shall be to employ the same for the purposes aforesaid, each subscriber shall give a promissory note, under his hand and seal, to the treasurer, payable on a certain day or days, or on demand, either in one entire payment, or by instalments; and such promissory notes, be it loan or donation, if attested by two credible witnesses, shall have the same force, and be to the same effect in law, as promissory notes given and obtained for a valuable consideration: And the said superintendants shall appoint a treasurer, either of their own number, or another of the inhabitants of the Northern-Liberties, for whom they shall be answerable to the rest of the subscribers, but may take such securities of him, as to them shall seem meet. And the said treasurer shall, upon the receipt of any subscription money, give a certificate, attested by two of the said superintendants, to the person who paid the same, expressing therein whether it be his donation or loan, and to the lenders, that the principal sum lent, and the interest thereof, at the rate of six per centum per annum, from the time of actual payment, is to be paid out of the income and profits of the said market, at every distribution of the said income to be made annually among the said lenders; which certificates shall be assignable, in like manner as bonds and promissory notes are made assignable by law.

Superintendants of the market appointed, who may take subscriptions,

payable in instalments.

A Treasurer to be appointed;

who shall issue certificates for subscription money.

SECT. V. *And be it further enacted by the authority aforesaid,* That it shall be lawful to and for the said Isaac Coats, David Rose, George Forepaugh, George Leib, Peter Brown, and John Britton, or any four of them, for and out of the monies subscribed and paid, to build at the intersection of Callowhill and New-Market-streets,

The Superintendants empowered to build market-houses.

1783. either at one and the same time, or successively, as the money shall come into their hands, four separate market-houses of brick, well covered with cedar shingles or tiles, in the four corners formed by the said two streets, each of the said market-houses upon the lines of Callowhill-street to be in length eastward and westward fifty-five feet, and in breadth northward and southward upon the lines of New-Market-street eighteen feet, with as many distinct stalls in the same as they shall think proper, leaving an area of fifty feet square for the free passage over the said streets, and a passage at least twenty feet wide between each market-house, and the houses and lots on the north and south sides of the market square, to set up lamps at and about the said market-houses, to pave the middle of the said two streets, next to the lines of gutters on both sides of the streets, so as the same are or shall be fixed by the regulators of the Northern-Liberties, and purchase and keep moveable booths or stands, to be used on great market days, when the brick stalls shall not be sufficient to contain all that is brought to this market ; (1) that it shall be lawful for the freeholders and inhabitants of the Northern-Liberties of the city of Philadelphia, annually, until all the monies borrowed on certificates shall be fully paid, at the time and place for electing supervisors of the highway, then and there to choose by ballot six superintendants of the said Callowhill market, and also one clerk of the said market, who shall make assay of weights and measures in the said market, and elsewhere in the Northern-Liberties, and do and perform all things belonging to the office of a clerk of the market within the said township.

Clerk of the
market ap-
pointed.

SECT. VI. *Provided always*, That if the said Callowhill market shall be ready to be opened before the third Saturday of March next, then Jeremiah Baker shall be the clerk of the market until that day ; and that the said Isaac Coats, David Rose, George Forepaugh, George Leib, Peter Brown, and John Britton, shall continue in the office of superintendants until the third Saturday of March, one thousand seven hundred and eighty-five, unless any one or more of them should in the mean time die, resign, or remove from the township, who shall be replaced on the township's election day next after such death, resignation, or removal : And whenever the said four market-houses shall be built, Callowhill-street and New-Market-street paved, and all the lenders of money on certificates be fully paid and satisfied, then, and from thenceforth, no more than two superintendants, a clerk of the market, and one treasurer, shall be annually elected, as aforesaid.

His fees of
office.

SECT. VII. *And be it further enacted by the authority aforesaid*, That the fees of the clerk of the said Callowhill market shall be the same as the fees of the clerk of the market for the city of Philadelphia now are, by custom, until the same shall be regulated and set by act of Assembly. And that the said superintendants shall annually, on the same day when the supervisors of the highways render their accounts to the Justices of the Quarter Sessions of the peace

(1) Altered and supplied, so far as the section relates to the election of superintendants and a clerk of the market, until the money borrowed on certificates is repaid, by an act of the 31st of August, 1785. [Note to former ed.]

for the county of Philadelphia, exhibit to the said Justices a fair and true account of all the donations and loans received, and of the costs and expenses of buildings, and incidental charges, and of the income and profits of the said market, and how much of the monies lent on certificates hath been paid to the lenders, which account shall be filed in the office of the Clerk of the Sessions, and be free to the inspection of all persons whom it may concern; and that, from and after the liquidation of all sums of money, principal and interest, lent on certificates, the clear incomes and profits of the said market shall be employed towards paving the most improved parts of the Northern-Liberties, nearest the said market, and repairing the roads and highways in the said Northern-Liberties. 1783.

(m)

Passed 6th September, 1783.—Recorded in Law Book No. 11. page 98.

(m) A penalty was imposed on hawking meat from door to door, or offering it for sale in any other place, within the Northern-Liberties, than the Callowhill market, by an act of the 18th of March, 1789. (*Note to former edition.*)

CHAPTER MXVI.

An ACT to re-establish the corporation of "The Juliana Library Company in Lancaster, in the county of Lancaster."

Passed 8th September, 1783.—Private Act.—Recorded in Law Book No. 11. page 103.

CHAPTER MXVIII.

An ACT for the establishment of a college at the borough of Carlisle, in the county of Cumberland, in the state of Pennsylvania.

(n)

SECT. I. WHEREAS the happiness and prosperity of every community (under the direction and government of Divine Providence,) depends much on the right education of the youth, who must succeed the aged in the important offices of society, and the most exalted nations have acquired their pre-eminence, by the virtuous principles and liberal knowledge instilled into the minds of the rising generation:

SECT. II. And whereas, after a long and bloody contest with a great and powerful kingdom, it has pleased Almighty God to restore to the United States of America the blessings of a general peace, whereby the good people of this state, relieved from the burthens of war, are placed in a condition to attend to useful arts,

(n) By an act of the 7th of April, 1786, there was a legislative grant of £.500, and 10,000 acres of land, to this college; by an act of the 3d of October, 1788, a lot and buildings in the borough of Carlisle were granted to the college; by acts of the 27th of March and 29th of September, 1789, the college was entitled to one fifth of the nett proceeds of a lottery established by law; and by an act of the 20th of September, 1791, a sum of £.1500 was appropriated for the immediate relief of the institution—And see title, Dickinson College, in the General Index. (*Note to former edition.*)

1783. sciences and literature, and it is the evident duty and interest of all ranks of people to promote and encourage, as much as in them lies, every attempt to disseminate and promote the growth of useful knowledge :

SECT. III. And whereas, by the petition of a large number of persons of established reputation for patriotism, integrity, ability and humanity, presented to this House, it appears that the institution of a college at the borough of Carlisle, in the county of Cumberland, for the instruction of youth in the learned languages, and other branches of literature, is likely to promote the real welfare of this state, and especially of the western parts thereof :

SECT. IV. And whereas this House is informed, as well by the said petition as by other authentic documents, that a large sum of money, sufficient to begin and carry on the design for some considerable time, is already subscribed by the generous liberality of divers persons, who are desirous to promote so useful an institution, and there is no doubt but that further donations will be voluntarily made, so as to carry it into perfect execution : And this House cheerfully concurring in so laudable a work :

SECT. V. *Be it therefore enacted, and it is hereby enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same,* That there be erected, and hereby is erected and established, in the borough of Carlisle, in the county of Cumberland, in this state, a college, for the education of youth in the learned and foreign languages, the useful arts, sciences and literature, the style, name and title of which said college, and the constitution thereof, shall be and are hereby declared to be as is hereafter mentioned and defined ; that is to say,

I. In memory of the great and important services rendered to his country by his excellency John Dickinson, esquire, President of the Supreme Executive Council, and in commemoration of his very liberal donation to the institution, the said college shall be for ever hereafter called and known by the name of " Dickinson College."

II. That the said college shall be under the management, direction and government of a number of trustees, not exceeding forty, or a quorum or board thereof, as here-in after mentioned.

III. That the first trustees of the said college shall consist of the following persons, viz.

His excellency John Dickinson, esquire, President of the Supreme Executive Council, Henry Hill, James Wilson, and William Bingham, esquires, and Doctor Benjamin Rush, of the city and county of Philadelphia.

The reverend James Boyd, of the county of Bucks.

Doctor John McDowell of the county of Chester.

The reverend Messieurs Henry Muhlenberg, A. M. and William Handell, and James Jacks, esquire, of the county of Lancaster.

The reverend Messieurs John Black, Alexander Dobbins, John McKnight, the honourable James Ewing, esquire, Vice-President of the Supreme Executive Council, and Robert McPherson, Henry

A college
erected at
Carlisle.

Trustees appointed.

Schlegle, Thomas Hartley, and Michael Hahn, esquires, of the county of York. 1783.

The reverend Messieurs John King, Robert Cooper, James Lang, Samuel Waugh, William Linn, and John Linn, and John Armstrong, John Montgomery, Stephen Duncan, Thomas Smith, and Robert Magaw, esquires, and Doctor Samuel A. M'Coskrey, of the county of Cumberland.

The reverend Christopher Emanuel Schulze, and Peter Spyker, esquire, of the county of Berks.

John Ardt, esquire, of the county of Northampton.

William Montgomery, and William M'Clay, esquires, of the county of Northumberland.

Bernard Dougherty, and David Espy, esquires of the county of Bedford.

The reverend James Sutton, and Alexander M'Clean, esquire, of the county of Westmoreland.

And William M'Cleary, esquire, of the county of Washington.

Which said trustees, and their successors, to be elected in the manner hereafter mentioned, shall for ever hereafter be, and they are hereby, erected, established and declared to be one body politic and corporate, with perpetual succession, in deed and in law, to all intents and purposes whatsoever, by the name, style and title of "The Trustees of Dickinson College, in the borough of Carlisle, in the county of Cumberland;" by which name and title, they, the said trustees, and their successors, shall be competent and capable at law and in equity to take to themselves, and their successors, for the use of the said college, any estate in any messuages, lands, tenements, hereditaments, goods, chattels, monies or other effects, by the gift, grant, bargain, sale, conveyance, assurance, will, devise or bequest, of any person or persons whatsoever, provided the same do not exceed in the whole the yearly value of ten thousand pounds, valuing one half johannes, weighing nine penny weight, at three pounds; and the same messuages, lands, tenements, hereditaments, and estate real and personal, to grant, bargain, sell, convey, assure, demise, and to farm let, and place out on interest, or otherwise dispose of, for the use of the said college, in such manner as to them, or at least seven of them shall seem most beneficial to the institution, and to receive the rents, issues, profits, income and interest of the same, and to apply the same to the proper use and support of the said college; and by the same name to sue, commence, prosecute and defend, implead and be impleaded, in any courts of law or equity, and in all manner of suits or actions, whatsoever, and, generally, by and in the same name, to do and transact all and every the business touching or concerning the premises, or which shall be incidentally necessary thereto, as fully and effectually, as any natural person or body politic or corporate within this commonwealth have power to manage their own concerns, and to hold, enjoy and exercise all such powers, authorities and jurisdictions as are customary in other colleges in Europe or America.

Trustees
incorporated
with certain
powers.

IV. That the said trustees shall cause to be made for their use one common seal, with such devices and inscriptions thereon, as they shall think proper, under and by which all deeds, diplomas,

The corporate seal,
as quorum, and
powers.

1783. certificates and acts of the said corporation shall pass and be authenticated, and the same seal, at their pleasure, to break, and devise a new one.

Quorum of nine to meet at Philadelphia, to commence the business of the college.

v. That the said trustees of the said college, or nine of them at least, shall meet at the city of Philadelphia, on the third Monday in September instant, for the purpose of concerting and agreeing to such business, as, in consequence of this act, shall be proper to be laid before them at the commencement of the work they have undertaken, and shall have power to adjourn from time to time, as they shall see cause, to any other times and places for the purpose of perfecting the same.

Corporation to meet yearly at Carlisle.

vi. That there shall be a meeting of the said trustees held once in every year at least, at the borough of Carlisle, at such time as the said trustees, or a quorum thereof, shall appoint, of which notice shall be given after the first meeting, either by public advertisements in two of the public news-papers of Philadelphia six weeks before the time, or by notice in writing, signed by the clerk or other officer of the said trustees, for that purpose to be appointed, and sent to each trustee, at least twenty days before the time of such intended meeting; and if at such meeting nine of the said trustees shall not be present, those of them who shall be present shall have power to adjourn the meeting to any other day, as fully and effectually, to all intents and purposes, as if the whole number of trustees for the time being were present; but if nine or more of the said trustees shall meet at the said appointed times, or at any other time of adjournment, then such nine of the said trustees shall be a board or quorum, and a majority of the votes of them shall be capable of doing and transacting all the business and concerns of the said college, not otherwise provided for by this act; and particularly, of making and enacting ordinances for the government of the said college, of electing trustees, in the place or stead of those who shall resign their places, or who shall die; of electing and appointing the principal and professors of the said college; of agreeing with them for their salaries and stipends, and removing them for misconduct, or breach of the laws of the institution; of appointing committees of their own body to carry into execution all and every the resolutions of the board; of appointing a treasurer, secretary, stewards, managers, and other necessary and customary officers, for the taking care of the estate, and managing the concerns of the corporation; and, generally, a majority of voices of the board or quorum of the said trustees, consisting of nine persons, at least, at any annual or adjourned meeting, after notice given as aforesaid, shall determine all matters and things (although the same be not herein particularly mentioned) which shall occasionally arise, and be incidentally necessary to be determined and transacted by the said trustees: *Provided always*, That no ordinances shall be of force, which shall be repugnant to the laws of this state.

Style of the chief master, and the other masters.

vii. The head or chief master of the said college shall be called and styled, "The Principal of the College;" and the masters thereof shall be called and styled, "Professors;" but neither principal nor professors, while they remain such, shall ever be capable of the office of trustee.

VIII. The principal and professors, or a majority of them, shall be called and styled, "The Faculty of the College," which faculty shall have the power of enforcing the rules and regulations adopted by the trustees for the government of the pupils, by rewarding or censuring them, and finally by suspending such of them, as, after repeated admonitions, shall continue disobedient and refractory, until the determination of a quorum of trustees can be had; and of granting and confirming, by and with the approbation and consent of a board of the trustees, signified by their mandamus, such degrees in the liberal arts and sciences, to such pupils of the college, or others, who, by their proficiency in learning, or other meritorious distinction, they shall think entitled to them, as are usually granted and conferred in other colleges in Europe or America, and to grant to such graduates diplomas or certificates, under their common seal, and signed by the faculty, to authenticate and perpetuate the memory of such graduation.

1788.

Faculty,
their powers
defined.

IX. Persons of every religious denomination among christians shall be capable of being elected trustees; nor shall any person, either as principal, professor, or pupil, be refused admittance for his conscientious persuasion in matters of religion; provided he shall demean himself in a sober, orderly manner, and conform to the rules and regulations of the college.

Who may be
elected trustees.

X. As it has been found by experience that those persons separated from the busy scenes of life, that they may with more attention study the grounds of the christian religion, and minister it to the people, are in general zealous promoters of the education of youth, and cheerfully give up their time and attention to objects of this kind: Therefore, whenever a vacancy shall happen, by the want of qualification, resignation, or decease of any clergyman, hereby appointed a trustee, such vacancy shall be filled by the choice of another clergyman of any christian denomination, and so *toties quoties* such vacancy shall happen, whereby the number of clergymen hereby appointed trustee shall never be lessened.

Number of
clergymen
appointed
trustees to
be kept up.

XI. No misnomer of the said corporation shall defeat or annul any gift, grant, devise or bequest, to or from the said corporation, provided the intent of the parties shall sufficiently appear upon the face of the gift, grant, will, or other writing, whereby any estate or interest was intended to pass to or from the said corporation, nor shall any disuser or nonuser of the rights, liberties, privileges, jurisdictions and authorities, hereby granted to the said corporation, or any of them, create or cause a forfeiture thereof.

Gifts, devises, &c. to be construed favourably.

SECT. VI. *And be it further enacted by the authority aforesaid,* That the constitution of the said college, herein and hereby declared and established, shall be and remain the inviolable constitution of the said college for ever, and the same shall not be altered or alterable by any ordinance or law of the said trustees, nor in any other manner, than by an act of the legislature of this state.

Constitution not to be altered unless by an act of Assembly.

SECT. VII. *And be it further enacted by the authority aforesaid,* That the said trustees, herein before appointed, and their successors, and the principal and professors, and every of them, hereafter to be appointed, in such manner and form as herein is directed and required, before he or they enter upon the duties of their trust

Manner of qualifying the trustees.

1783. or office, shall, before two Justices of the peace of the city of Philadelphia, or of some county of this state, take and subscribe the oath or affirmation prescribed by the fortieth section of the constitution of this commonwealth, to be taken by the officers of this state, and also the oath or affirmation of allegiance directed to be taken by the same officers, in and by the seventh and eighth sections of an act of Assembly, made and passed the fifth day of December, in the year of our Lord one thousand seven hundred and seventy-eight, entitled "A further Supplement to the act, entitled "An Act for the further security of the government," and shall also take an oath or affirmation for the faithful discharge of their trust of office aforesaid.

Passed 9th September, 1783—Recorded in Law Book No. II. page 110.

CHAPTER MXX.

An ACT for erecting the town of Reading, in the county of Berks, into a borough; for regulating the buildings, preventing nuisances and encroachments on the squares, streets, lanes and alleys of the same, and for other purposes therein mentioned.

[THIS act is in the same words as the act for incorporating the borough of Carlisle, ante. pa. 17, chap. 958. All the sections corresponding—so that the abstract there given will shew the powers, privileges, &c. of the corporation of the borough of Reading.—Three sections however, in the Carlisle act, respecting the public commons, are peculiar to that act, no such provisions being inserted in this act.

This act is printed at large—vol. 2, folio, pa. 124, vol. 2d 8vo pa. 419.]

Passed September, 12th, 1783.—Recorded in Law Book, No. II. pa. 120.

CHAPTER MXXI.

An ACT to repeal sundry acts of Assembly, imposing duties on goods, wares and merchandize, and for other purposes therein mentioned.

SECT. I. WHEREAS the commissioners for the defence of the bay and river Delaware, have, by their memorial to the Supreme Executive Council, and transmitted by them to this House, set forth, that they apprehend they are in possession of money sufficient to answer the ends of their appointment :

SECT. II. And whereas the merchants of the city of Philadelphia have represented it as detrimental to the trade of this state, to continue the duty of four-pence per gallon on all wines imported, and two shillings and six-pence per dozen on all wines imported in bottles, and four-pence per gallon on all strong beer in casks, and two shillings and six-pence per dozen on such beer imported in bottles, and two-pence per pound on all refined sugar, imposed by the act, entitled "An Act for raising and collecting of money on

the specified articles therein mentioned, for the support of government, and for other purposes therein mentioned," passed the twentieth day of March last : 1783.

SECT. III. *Be it therefore enacted, and it is hereby enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same,* That the act, entitled "An act for guarding and defending the navigation in the bay and river Delaware, and for other purposes therein mentioned," and the act, entitled "An act for raising an impost on goods, wares and merchandise, imported or brought into this state by land," and so much of the act, entitled "An act for raising and collecting of money on the specified articles therein mentioned, for the support of government, and for other purposes therein mentioned," as is contained in the seventh, eighth and ninth sections thereof, be, and the same are hereby, specially and severally repealed, made null and void, and of no effect. (o)

Former acts repealed.

SECT. VI. *And be it further enacted by the authority aforesaid,* That whatever sum or sums of money now are in the hands of the Naval Officer, or for which he hath taken bonds or other securities, or which may come into his hands by virtue or on account of the acts aforesaid, shall be, and hereby are, appropriated to such uses, as the Assembly may by their vote direct and appoint.

Appropriation of monies, &c. directed.

Passed 17th September, 1783.—Recorded in Law Book No. II. pa. 146.

(o) For the laws which are repealed by this act, see ante. chap. 954, 987, 1007.—But now see the constitution and laws of the United States. (Note to former edition.)

CHAPTER MXXIV.

An ACT to ratify and confirm an agreement, made between commissioners appointed by the legislature of the state of New-Jersey, and commissioners appointed by the legislature of the state of Pennsylvania, for the purpose of settling the jurisdiction of the river Delaware, and islands within the same. (p)

SECT. I. WHEREAS commissioners duly appointed on the part of the state of New-Jersey, and commissioners duly appointed on the part of the state of Pennsylvania, for the purpose of settling the jurisdiction of the river Delaware, and islands within the same, have executed two instruments of an agreement for the purposes aforesaid, one for each state, which agreement is contained in the following words :

An agreement made and concluded between George Bryan, George Gray, William Bingham, commissioners appointed by the legislature of the state of Pennsylvania, for settling the jurisdiction of the river Delaware, and islands within the same ; and Abraham

(p) The islands belonging to Pennsylvania were distributed, and annexed to the jurisdiction of the contiguous counties, by an act of the 25th of September, 1786. (Note to former edition.)

1783. Clark Joseph Cooper, and Thomas Henderson, commissioners appointed by the legislature of the state of New-Jersey, for the like purpose.

WHEREAS inconveniences and mischiefs have arisen, and hereafter may arise, from the uncertainty of jurisdiction within and on the river Delaware : Therefore, to prevent the same, and in order that law and justice may in all cases hereafter be executed and take effect within and upon the said river, from shore to shore, in all parts and places thereof, where the same river is the boundary between the said states, the said commissioners do agree and establish, for and in behalf of their respective states, in manner following ; that is to say,

Recital of an agreement between the commissioners of Pennsylvania and New-Jersey, respecting the jurisdiction over islands in the Delaware.

First. It is declared that the river Delaware, from the Station-Point or north-west corner of New-Jersey, northerly, to the place upon the said river where the circular boundary of the state of Delaware toucheth upon the same, in the whole length and breadth thereof, is and shall continue to be and remain a common highway, equally free and open for the use, benefit and advantage of the said contracting parties. *Provided nevertheless,* That each of the legislatures of said states shall hold and exercise the right of regulating and guarding the fisheries on the said river Delaware, annexed to their respective shores, in such manner, that the said fisheries may not be unnecessarily interrupted during the season for catching shad, by vessels riding at anchor on the fishing ground, or by persons fishing under claim of a common right on said river.

Secondly. That each state shall enjoy and exercise a concurrent jurisdiction within and upon the water, and not upon the dry land, between the shores of said river, but in such sort, nevertheless, that every ship and other vessel, while riding at anchor before any city or town in either state, where she hath last laded or unladed, or where it is intended she shall first thereafter either lade or unlade, shall be considered exclusively within the jurisdiction of such state ; and every vessel fastened to or aground on the shore of either state, shall in like manner be considered, exclusively, within the jurisdiction of such state, but that all capital and other offences, trespasses or damages, committed on said river, the juridical investigation and determination thereof shall be exclusively vested in the state, wherein the offender or person charged with such offence shall be first apprehended, arrested or prosecuted.

Thirdly. That all islands, islets, and dry lands, within the bed and between the shores of the said river, and between the said Station-Point northerly and the falls of Trenton southerly, shall as to jurisdiction, be hereafter deemed and considered as parts and parcels of the state to which such insulated dry land doth lie nearest, at the time of making and executing this agreement ; and that from said falls of Trenton to the state of Delaware, southerly, Biles's island, near Trenton, Wind-Mill island, opposite to Philadelphia, League island, Mud or Port island, Hog island, and Little Timmicum islands, shall be annexed to the state of Pennsylvania, and considered as parts and parcels thereof ; and that Bidle's or Newbold's island, Burlington island, Petty's island, Red Bank island, Hermanus Helm's island, Chester island, and Shievers's island, shall be annexed to the

state of New-Jersey, and considered as parts and parcels thereof; and that all other islands within the said river between the falls of Trenton and the state of Delaware, which are not herein before particularly enumerated, shall be hereafter deemed and considered as parts and parcels of the state, which such island doth lie nearest at the date hereof; and that all islands which may hereafter be formed within the said river, shall be classed and annexed to the jurisdiction of either state, according to the same principle. 1783.

Fourthly. That this present agreement, and every article and clause therein contained, shall be suspended, and take no effect, until each of the legislatures of the state of Pennsylvania and New-Jersey, respectively, shall have passed laws approving of and ratifying the same, which being done, the said agreement shall then be considered as a joint compact between the said states and the citizens thereof, respectively, and be for ever thereafter irrevocable by either of the said contracting states, without the concurrence of the other.

In witness whereof, we, the commissioners of the aforesaid states, have set our hands and seals to two instruments of the agreement, one for each state, dated this twenty-sixth day of April, Anno Domini one thousand seven hundred and eighty-three.

Abraham Clark,	(L. S.)	George Bryan,	(L. S.)
Joseph Cooper,	(L. S.)	George Gray,	(L. S.)
Thomas Henderson,	(L. S.)	William Bingham,	(L. S.)

SECT. II. *Be it therefore enacted, and it is hereby enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania in General Assembly met, and by the authority of the same,* That the aforesaid agreement, and every article, clause, matter and thing, therein contained, shall be, and the same is hereby, fully and amply ratified and confirmed, and shall be, and ever hereafter remain, in force, agreeably to the true tenor and extent thereof. The agreement ratified and confirmed.

Passed 20th September, 1783.—Recorded in Law Book No. II. page 151.

CHAPTER MXXIX.

A further SUPPLEMENT to an act, entitled "An act for acknowledging and recording of deeds." (q)

SECT. I. WHEREAS, in and by an act of General Assembly of the late province of Pennsylvania, now in force within this commonwealth, entitled "An act for acknowledging and recording of

(q) See the original act, and various other acts respecting the acknowledging and recording of deeds, passed the 24th of February, 1770, by which the conveyances executed by femes covert are regulated; the 18th of March, 1775, by which additional general provisions are made on the subject; the 8th of April, 1785, by which acknowledgments and probates of deeds of lands in any part of the state, made before the Presidents of the courts of Common Pleas, are declared to be as valid and effectual, as if done before a Judge of the Supreme Court; and the act of the 30th of September, 1791, by

which the Mayor and Recorder of the city of Philadelphia, the Master of the Rolls, and the Justices of the Peace, are empowered to take proofs or acknowledgments of all instruments of writing, in the same manner as Justices of the Peace, and Justices of the Common Pleas, might or could have done, by virtue of the several acts of the 28th of May, 1770, the 18th of March, 1775, and the 24th of February, 1779. For a particular reference to all the laws for regulating the acknowledgment and recording of deeds, see chap. 208, and the note there subjoined, ante. vol. I. page 94. *(Note to former edition.)*

1783. deeds," passed the twenty-eighth day of May, one thousand seven hundred and fifteen, it is provided, that no deed or mortgage, or defeasible deeds in the nature of mortgages, thereafter to be made, should be good or sufficient to convey or pass any freehold or inheritance, or to grant any estate therein for life or years, unless such deed be acknowledged or proved, and recorded, within six months after the date thereof, where such lands lie.

SECT. II. And whereas the interruptions of the war, the expiring of the proper officers' commissions by the late revolution, the invasion of the enemy, and other causes, may have prevented many mortgages, or defeasible deeds in nature of mortgages, made and executed between the first day of January, in the year of our Lord one thousand seven hundred and seventy-six, and the eighteenth day of June, in the year of our Lord one thousand seven hundred and seventy-eight, from being acknowledged or proved, and recorded, within the times limited by the said act, whereby many of the citizens of this commonwealth may lose their just demands, unless provision be made by law to prevent the same:

SECT. III. *Be it therefore enacted, and it is hereby enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same,* That all mortgages, and defeasible deeds in nature of mortgages, of any lands, tenements or hereditaments, within this commonwealth, made and executed at any time or times between the said first day of January, one thousand seven hundred and seventy-six, and the said eighteenth day of June, one thousand seven hundred and seventy-eight, which hath or have, at any time or times since the date or dates thereof, been acknowledged or proved, and recorded, or which shall, within six months from and after the passing of this act, be acknowledged or proved, and recorded, in the manner directed in and by the said recited act, shall be as good and effectual in law, to all intents and purposes (except as herein after is provided,) as if the same had been acknowledged or proved and recorded, within the time limited in and by the said recited act.

SECT. IV. *Provided always nevertheless,* That nothing in this act contained shall extend to, or be deemed or construed to operate against, any subsequent judgment, statute, recognizance, attainder, forfeiture or lien, whatsoever, or against any subsequent *bona fide* mortgagee or mortgagees, purchaser or purchasers, of any estate, lands, tenements or hereditaments, mentioned or contained in any such prior deed or mortgage, or defeasible deed in nature of a mortgage, who shall have taken such subsequent mortgage, or made such subsequent purchase, before such prior mortgage, or defeasible deed in nature of a mortgage, was or shall be acknowledged or proved and recorded, agreeable to the directions of this act.

Passed 23d September, 1783.—Recorded in Law Book No. II. page 165.

CHAPTER MXXX.

An ACT for incorporating St. Paul's church, in the city of Philadelphia.

Passed 23d September, 1783.—Private Act.—Recorded in Law Book No. II. page 167.

Mortgages, &c. made between January 1, 1776, and June 18, 1778 upon being recorded within six months made valid.

Provision in favour of bona fide mortgagees and purchasers.

CHAPTER MXLII.

1783.

An ACT to establish a ferry over the Allegheny river, at the town of Pittsburgh.

[THE right granted to lieutenant-colonel William Butler, and a lot assigned to him out of the reserved tract opposite Pittsburgh, to include the mouth of a small run opposite the town, for the purpose of erecting necessary buildings, to be surveyed, laid out, and paid for by him as the legislature should afterwards direct.]

Passed September 25th, 1783.—Recorded in Law Book No. II. page 190.

CHAPTER MXLIII.

An ACT to establish a ferry over the Monongahela river, at the New-Store.

[THE right vested in Mary M'Kay, widow, for the use of the two children of colonel Æneas M'Kay.]

Passed September 25th, 1783.—Recorded in Law Book, No. II. page 192.

CHAPTER MXLV.

An ACT for erecting part of the county of Westmoreland into a separate county.

SECT. I. WHEREAS a great number of the inhabitants of that part of Westmoreland county, circumscribed by the rivers Monongahela and Youghiogeny, and Mason and Dixon's line, have, by their petition, humbly represented to the Assembly of this state the great inconvenience they labour under, by reason of their distance from the seat of judicature in said county: For remedy whereof,

SECT. II. *Be it enacted, and it is hereby enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same, That all and singular the lands lying within that part of Westmoreland county, bounded as herein after described, beginning at Monongahela river, where Mason and Dixon's line intersects the same; thence down said river to the mouth of Speir's run; thence by a straight line, to the mouth of Jacob's creek; thence by the Youghiogeny river to the forks of the same; thence up the south-west branch of the said river, by a part of Bedford county, to Mason and Dixon's line; thence by said line to the Monongahela river aforesaid; be and hereby are erected into a county, named, and hereafter to be called, Fayette county.*

Boundaries
of the county
of Fayette
described.

SECT. III. *And be it further enacted by the authority aforesaid, That the inhabitants of the said county of Fayette shall at all times hereafter have and enjoy all and singular the jurisdictions, powers,*

Its name.

Privileges
declared.

1788. rights, liberties and privileges whatsoever, which the inhabitants of this state do, may, or ought to enjoy, by any charter of privileges, or the laws of this state, or by any other ways and means, whatsoever.

Manner of holding elections.

[Altered.]

[Altered by the constitution]

Supreme Court to have jurisdiction.

[Altered by the constitution and judiciary laws.]

Times of holding courts.

Commissioners for purchasing a piece of ground.

SECT. IV. *And be it further enacted by the authority aforesaid,* That the inhabitants of each township or district within the said county, qualified by law to elect, shall meet at some convenient place within their respective townships or districts, at the same time the inhabitants of the several townships of the other counties within this state shall meet for like purposes, and choose inspectors, [and then and there elect one Representative to serve them in Assembly, one Counsellor,] two fit persons for Sheriffs, two fit persons for Coroners, and three Commissioners, in the same manner, and under the same rules, regulations and penalties, as by the constitution and laws of this state are directed in respect to other counties, which Representative, so chosen, shall be a member of the General Assembly of the commonwealth of Pennsylvania, and shall sit and act as such, as fully and as freely as any of the other Representatives of this state do, may, can, or ought to do, [and the said Counsellor, when so chosen, shall sit and act as fully and freely as any of the other members of the Supreme Executive Council of this state do, may, can, or ought to do.]

SECT. VII. *And be it further enacted by the authority aforesaid,* That the Justices of the Supreme Court of this state shall have like powers, jurisdictions and authorities, within the said county of Fayette, as by law they are vested with and entitled unto in the other counties within this state; and are hereby authorized and empowered, from time to time, to deliver the gaol of the said county of capital or other offenders, in like manner as they are authorized to do in other counties aforesaid.

[SECT. IX. *Provided always,* That the Justices of the peace, commissioned at the time of passing this act, and residing within the county of Fayette, or any three of them, shall and may hold courts of General Quarter Sessions of the peace and General Gaol Delivery, and county courts for holding of Pleas; and shall have all and singular the powers, rights, jurisdictions and authorities, to all intents and purposes, as other the Justices of courts of General Quarter Sessions, and Justices of the county courts for holding of Pleas in the other counties, may, can or ought to have in their respective counties; which said courts shall sit and be held for the said county of Fayette on the Tuesday preceding the courts of Quarter Sessions and Common Pleas in Washington county in every year, at the school-house, or some fit place in the town of Union, in the said county, until a court-house be built; and when the same is built and erected in the county aforesaid, the said several courts shall then be holden and kept at the said court-house, on the days before mentioned.]

SECT. X. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful to and for Edward Cook, Robert Adams, Theophilus Philips, James Dougherty, and Thomas Rodgers, all of the aforesaid county, yeomen, or any three of them, to purchase and take assurance to them and their heirs, of a piece

of land, situated in Union town, in trust, and for the use of the inhabitants of the said county, and thereon to erect and build a court-house and prison, sufficient to accommodate the public service of the said county. 1783.

Passed 26th September, 1783.—Recorded in Law Book No. II. page 194. (r)

(r) The sections omitted in this act have become obsolete—as, sect. 5. To be represented by one member in the Assembly. 6. Taxes already assessed to be paid to Westmoreland. 8. Justices of the peace to be elected by the people. 11. How money was to be raised for purchasing public ground. 12. Not to exceed a certain sum. 13. Process in Westmoreland not to be discontinued. 14. Collector of excise to be appointed. 15. Who was to collect arrearages. 16. And to give security. 17. Sheriff of Westmoreland to officiate until the election in Fayette. 18. Trustees to run the boundary lines within a limited time. 19. Sheriff and Treasurer to give security, both of which are supplied.

By an act passed Feb'y 17th, 1784, (chap. 1057,) an additional part of Westmoreland county is added to Fayette, beginning at the mouth of Jacob's creek, thence up the main branch of said creek to Cherry's mill, thence along the road leading to Jones' mill, until the same shall intersect the line of Bedford county, (now Somerset,) thence southwesterly by the line of Bedford county aforesaid, until the same intersects the Youghiogony river, thence down the said river to the place of beginning.

The commissioners of Fayette county were authorized to raise a further sum of money for the purpose of erecting public buildings for the use of said county, by act of Jan'y 19th, 1793, (chap. 1638.)

Union Town was incorporated by act of April 4th, 1796, (chap. 1899.)

Fayette county divided into four election districts by act of March 3d, 1790, (chap. 1473.)

Salt Lick township erected into a district, April 8th, 1799, (chap. 2049, sect. 2.)

Wharton township erected into a district, April 8th, 1799, (chap. 2050, sect. 7.)

Place of holding elections in the fourth district changed Dec'r 1st, 1800, (chap. 2142.)

Dunbar township annexed to the fourth district, April 5th, 1802, (chap. 2279.)

Franklin township erected into a district, and called the 7th district, Feb'y 1st, 1805, (chap. 2521.)

Place of holding elections in the sixth district changed April 11th, 1807, (chap. 2856, sect. 16.)

Washington township erected into a district March 28th, 1808, chap. 2972, sect. 19.)

By the last enumeration, the county of Fayette contained four thousand four hundred and fifty-four taxables; and, by act of March 21st, 1808, (chap. 2931,) apportioning the representation in pursuance thereof, sends three members to the House of Representatives, and one member to the Senate.

By the judiciary act of Feb'y 24th, 1806, (chap. 2634,) the counties of Beaver, Allegheny, Washington, Fayette and Greene form the fifth district. The term continues one week. The courts in Beaver commence on the first Mondays in January, August and November, and last Monday in March, and in the other counties in succession, as above named.

Fayette county composes part of the western district of the Supreme Court.

CHAPTER MXLVI.

An ACT for incorporating the Baptist church in the township of Montgomery, and county of Philadelphia.

Passed 26th September, 1783.—Private Act.—Recorded in Law Book No. II. page 200.

A C T S

OF THE

General Assembly of Pennsylvania.

Passed in the eighth General Assembly—the first Session of which commenced October 27th, 1783, and ended December 9th, 1783. The second commenced January 13th, 1784, and ended April 1st, 1784—and the third commenced August 20th, 1784, and ended September 29th, 1784.

1783.

GEORGE GRAY, SPEAKER.

CHAPTER MLI.

*An ACT for supplying an act, entitled “ An act for the effectual recovering and securing the fines, forfeitures, and other monies, due or belonging to the commonwealth, for the use of the same.”**

[*Chap. 206,
888.]

SECT. I. TO the end that all fines, forfeited recognizances, issues, amercements, and sums of money, forfeited and recovered in any courts in this commonwealth, or before any Justice or Justices of the peace, for the use of the commonwealth, may be the more easily collected, levied and paid into the public treasury,

Recogni-
zances for-
feited in
Quarter
Sessions,
suable in
Common
Pleas.

SECT. II. *Be it enacted, and it is hereby enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same, That all recognizances forfeited in any court of Quarter Sessions of the peace within this commonwealth, or in the Sessions held for the city of Philadelphia, shall and may be sued for, and be recoverable, in the court of Common Pleas of that county, in which the said recognizances shall be forfeited respectively, which courts may, and they are hereby, empowered to order the said recognizances to be levied, moderated or remitted, on hearing the circumstances of the case, according to equity and their legal discretion.*

Supreme
Court may
hear appeals,
within a li-
mited time.

SECT. III. *Provided always nevertheless, and be it further enacted by the authority aforesaid, That the Supreme Court of this commonwealth may hear appeals from such orders or judgments of the courts of Common Pleas, on the said forfeited recognizances, at the*

next ensuing term after such judgment given, but not afterwards, 1783. and finally decide on the same.

SECT. IV. *And be it further enacted by the authority aforesaid,* That all recognizances forfeited in the Supreme Court, or in any court of Oyer and Terminer, General Gaol Delivery, Admiralty Sessions, or Admiralty, or before any special commissioners of Oyer and Terminer in this state, shall be sued for, and be recoverable, in the Supreme Court of this state, which is hereby empowered to order the said recognizances to be levied, moderated or remitted, according to justice and their legal discretion.

Forfeited
recognizances to be
sued in the
Supreme
Court.

SECT. V. *And be it further enacted by the authority aforesaid,* That all fines, issues, amercements, forfeited recognizances, and other forfeitures, which, from and after the publication of this act, shall be set, imposed, lost or forfeited, for the use of the commonwealth, in the Supreme Court, or in any Courts of Oyer and Terminer, Gaol Delivery, Admiralty, Admiralty Sessions, Common Pleas, or Quarter Sessions of the peace, or in the Sessions held for the city of Philadelphia, or by any Justice or Justices of the peace in this commonwealth, shall, by the Clerks, Prothonotaries, or other Registers of the said courts, respectively, or by the said Justice or Justices of the peace, be certified and estreated into the Comptroller-General's office,* on the first day of May, and the first day of November, in every year hereafter; and that the Prothonotaries of the said Supreme Court and the courts of Common Pleas shall also certify and estreat, at the same time, into the said Comptroller-General's office, the orders and judgments of the same courts respectively, on all such forfeited recognizances as shall be sued upon in the same courts; which said estreats or certificates shall be delivered into the said Comptroller-General's office by the said Prothonotaries, Clerks, Registers, Justice and Justices of the peace, respectively, upon their oath or affirmation, first being made before, and certified by, two Justices of the peace, or one judge of the Supreme Court, that the said estreats had been carefully and fully made up and examined by them, without any wilful or fraudulent omission, discharge or defect, whatsoever, and that they had therein particularly specified and mentioned such fines, issues, amercements, forfeited recognizances, and other forfeitures, which had been paid into their hands, for the use of the commonwealth, to the best of their knowledge.

Fines, &c.
shall be cer-
tified and
estreated
into the
Comptroller-
General's
office.

[* See an act
passed
March 17th,
1809, for
the new
arrangement
of the
Treasury
Depart-
ment.]

SECT. VI. *And be it further enacted by the authority aforesaid,* That the said Clerks, Prothonotaries, Registers, Justice and Justices of the peace, and all other persons, who shall or may receive, or be accountable to the commonwealth for, any fines, issues, amercements, forfeited recognizances, or other forfeitures, shall, within three months after they have received, any such sum or sums of money, pay the same into the hands of the High Sheriff of their respective counties; and the said Sheriffs shall, on the first day of November in every year hereafter, (and as often as thereunto required by the Comptroller-General) render an account of all such monies as may have come to their hands, as aforesaid, to the Comptroller-General's office, for settlement, and the money which shall be found due on such settlement shall then be immediately

Clerks, &c.
receiving
fines and
forfeitures,
shall pay the
same to the
High Sher-
riff.

who shall
account
with the
Comptroller-
General.

1783.

Commissioners
allowed.Clerks, &c.
fineable for
neglect or
breach of
duty.Repealing
clause with
exception.]

paid to the Treasurer of the state, the said Sheriffs deducting a commission of two and one half per cent. for their trouble in collecting such monies ; and the Treasurer of the state shall be allowed a commission of one half per cent, for all such monies, so as aforesaid paid into the treasury.

SECT. VII. *And be it further enacted by the authority aforesaid,* That if any of the said Clerks, Prothonotaries, Justices, Sheriffs, or other officers before mentioned, shall neglect or refuse to do and perform the several duties required of them by this act, or shall wittingly and willingly spare, take off, discharge, or conceal any fine, issue, amercement, forfeited recognizance, or other forfeiture, whatsoever, which shall be due to the commonwealth, and ought to be certified, estreated, or paid by him, by virtue of this act, such Clerks, Prothonotaries, Justice or Justices, Sheriffs, or other officers, shall be indicted and fined, for every such offence, at the discretion of the court.

SECT. VIII. *And be it further enacted by the authority aforesaid,* That the act, entitled "An act for the effectual recovering and securing the fines, forfeitures and other monies, due or belonging to the commonwealth, for the use of the same," shall have no effect or force whatever, after the publication of this act, except so far as the same may relate to fines, issues, amercements, forfeited recognizances, sum and sums of money, paid in lieu and satisfaction of them, and other forfeitures, which have been set, imposed, lost, or forfeited in the Supreme Court, or in any of the courts of Common Pleas, courts of General Quarter Sessions of the peace, and Gaol Delivery, or before any special commissioners of Oyer and Terminer, in any county of this state, or before any Justice or Justices of the peace, before the publication of this act, to which purposes, only, the said recited act, and all the powers and authorities therein given, shall be and remain in force, any thing contained in this act notwithstanding.

Passed 9th December, 1783.—Recorded in Law Book No. II. page 220.

CHAPTER MLII.

An ACT to revive and continue in force the acts of Assembly regulating sales by public auction, and for other purposes therein mentioned. (s)

SECT. I. WHEREAS the Assembly of this commonwealth, in the year one thousand seven hundred and eighty, frequently made the title a part of the laws by them enacted : And whereas, from that and other good causes, the act passed the twenty-third day of September, one thousand seven hundred and eighty, entitled "An act to alter and amend an act, entitled "An act for the effectual suppression of public auctions and vendues, and to prohibit male

(s) For the act cited in the first reference to all the laws respecting section of this act, see ante. chap. 908, vendues, see the note there subjoined. and for the original act, and a general (Note to former edition.)

persons, capable of bearing arms, from being hawkers and pedlars," 1783.
and of consequence the supplement to the same, passed April the
thirteenth, one thousand seven hundred and eighty-two, expire, by
their own limitation, on the termination of the war with Great Bri-
tain, as will more fully appear, reference being had to the act on
which the said acts are grafted, passed on the twenty-sixth day of
November, one thousand seven hundred and seventy-nine: And
whereas from the exigencies of the state, it appears necessary that
the said recited acts should be continued, and made perpetual:

SECT. II. *Be it therefore enacted, and it is hereby enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same,* That the said act, entitled "A Supplement to an act entitled "An act to alter and amend an act, entitled "An act for the effectual suppression of public auctions and vendues, and to prohibit male persons, capable of bearing arms from being hawkers and pedlars," and every clause, matter and thing, therein contained, and so much of the act aforesaid passed September the twenty-third, one thousand seven hundred and eighty, as is not altered or supplied by the said supplement, or by this act, shall be, and the same are hereby declared to be, in full force, and binding, to all intents and purposes whatsoever, and made perpetual, as if every clause, matter and thing, in the acts aforesaid (except as before excepted,) were herein specially inserted.

SECT. III. *And be it further enacted by the authority aforesaid,* That if any auctioneer or auctioneers, appointed under this act, or any person or persons by his or their directions, shall, at any time hereafter, purchase on account, or for the use, of the said auctioneers, or any of them, at his or their respective auctions, any goods, wares or merchandize, and the same be proved, on the oath of one or more credible witness or witnesses, before the Justices of the Quarter Sessions, in the city or county of Philadelphia, such auctioneer shall forfeit and pay the sum of five hundred pounds, one half for the use of the state, and the other for the use of the person who informs and proves the buying aforesaid, to be recovered in any court of record within this state, and shall moreover be rendered incapable thereafter to serve in any post of honour or profit in this state.

SECT. IV. *And be it further enacted by the authority aforesaid,* That the several and respective auctioneers shall, once in every three months, or oftener, if thereunto required by the Comptroller-General,* exhibit and render their accounts upon oath or affirmation to the said Comptroller-General, of all the effects or property by him or them sold at any time before the said time of rendering the same account, and since his last settlement, and of the monies paid by him to the Treasurer, arising from the duty upon sales, and any auctioneer so failing or neglecting shall be discharged from his place, and his bond put in suit.

[SECT. V. And whereas applications from many deserving citizens have been made for the office of auctioneer, the merits of which, from the short time the house intends to sit, cannot now be decided:]

Certain acts declared perpetual;

Penalty on auctioneer, &c. buying on his own account.

One moiety of forfeiture to the state, the other to the informer.

Penalty on auctioneers failing to account, &c. once in three months, or oftener. [* Now Auditor-General.]

1783.

Auctioneers
appointed.
[Repealed
April 4th,
1785, chap.
1147,) but
the appoint-
ment is now
in the
Governor.]
Repealing
clause.

[SECT. VI. *Be it therefore enacted by the authority aforesaid,* That John Bayard, William Brown, and Alexander Boyd, shall continue to do and execute the duty of auctioneer, respectively, as they have heretofore done, until the end of the next sitting of this House, or until they shall, by their resolution, otherwise direct or appoint.]

SECT. VII. *And be it further enacted by the authority aforesaid,* That so much of the act aforesaid, passed the twenty-third day of September, one thousand seven hundred and eighty, as is altered or supplied by this act, be, and the same is hereby, repealed and made void.

Passed 9th December, 1783.—Recorded in Law Book No. II. page 223.

CHAPTER MLV.

An ACT to establish a ferry over the Monongahela and Youghiogeny rivers, and to vest the right in John M'Kee, his heirs and assigns, for ever.

[THIS ferry is near the mouth of Youghiogeny, to be at all times kept in good order and repair, fit for men, horses and carriages to pass and repass, with good and substantial boats, and capable and good ferrymen, and to be subject to such rates, rules and regulations as the Legislature should in future direct.]

Passed 5th February, 1784.—Private Act.—Recorded in Law Book No. II. page 230.

CHAPTER MLVII.

An ACT for annexing part of Westmoreland county to the county of Fayette.

SECT. I. WHEREAS the inhabitants of that part of Westmoreland county, circumscribed by Fayette county on the west, on the east by part of Bedford county, and on the north by part of Westmoreland county, have represented to the Assembly of this commonwealth, by their petition, the remote distance they may be left from the seat of justice, and the inconsiderable size of the new county: For remedy whereof,

SECT. II. *Be it enacted, and it is hereby enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same,* That all that part of Westmoreland county, beginning at the mouth of Jacob's creek, thence up the main branch of the said creek, to Cherry's mill, thence along the road leading to Jones's mill, until the same shall intersect the line of Bedford county, thence south-westerly, by the line of Bedford county aforesaid, until the same intersects the Youghiogeny river, thence down the said river to the place of beginning, be, and the same is hereby, annexed to the

{Original
act erecting
Fayette
county, ante-
page 81,
chap. 1045.]

Boundaries
described.

said county of Fayette, and to all intents and purposes constituted 1784.
a part of the same.

SECT. III. *And be it further enacted by the authority aforesaid,* ^{Privileges described.}
That the inhabitants of all that part of Westmoreland county, by this act annexed to the said county of Fayette, shall, at all times hereafter, have and enjoy all and singular the jurisdictions, powers, rights, liberties and privileges, whatsoever, which the inhabitants of Fayette county, or that the inhabitants of any other county within this state, do, may, or ought to enjoy, by any charter of privileges, or the laws of this state, or by any other ways and means, whatsoever.

Passed 17th February, 1784.—Recorded in Law Book No. II. page 233.

CHAPTER MLX.

An ACT to establish a public ferry over the Youghiogeny river, and for vesting the right in John Sumrall, his heirs and assigns.

[THIS ferry is no otherwise designated, than by “the plantation of John Sumrall, at or near the place where he formerly kept the ferry,” the privileges and conditions are the same as in chap. 1055, with an additional section, that the act shall not be construed to vest a right in I. S. to land upon the landings of other persons, without their consent.]

Passed 11th March, 1784.—Recorded in Law Book No. II. page 241.—Private Act.

CHAPTER MLXI.

An ACT to establish a public ferry at the town of Pittsburgh, in Westmoreland county, and for vesting the right in John Ormsby, his heirs and assigns, for ever.

[THIS ferry is over the Monongahela river, at Pittsburgh—with the same privileges, conditions and restrictions as in chap. 1060, last preceding.]

Passed 11th March, 1784.—Recorded in Law Book No. II. page 243.—Private Act.

CHAPTER MLXII.

An ACT to establish a ferry over the Ohio river, at the mouth of Saw-mill run.

[THE right vested in Daniel Elliott, to establish a ferry over the river Ohio, at the mouth of Saw-mill run, about a mile below Fort-Pitt, on the south west side of said river, over to the north east side thereof, into the reserved lands of the state, under the same conditions as in chap. 1055.]

Passed 11th March, 1784.—Recorded in Law Book No. II. page 244.—Private Act.

1784.

CHAPTER MLXIII.

An ACT for incorporating the Presbyterian church in Hanover township, Lancaster county.

Passed 15th March, 1784.—Private Act—Recorded in Law Book No. II. page 245.

CHAPTER MLXVII.

A SUPPLEMENT to an act, entitled “An act for making the river Schuylkill navigable, and for the preservation of the fish in the said river,” and to two supplements to the same act. (t)

SECT. I. WHEREAS the improving the navigation of the river Schuylkill, so as to make it passable at all times, will be very advantageous to the poor, greatly promote the spirit of industry, and be beneficial to a considerable part of this state, by enabling the inhabitants to bring their produce to market, for furnishing the country adjoining the same river, and the city of Philadelphia, with coal, masts, spars, boards, scantling, and many other necessary and useful articles : And whereas divers inhabitants of this state have, by their petitions, prayed that some effectual steps may be taken to make the same river navigable, and the laws heretofore enacted being inadequate for the purpose aforesaid, for want of a proper fund, to be employed by commissioners therein named :

SECT. II. *Be it therefore enacted, and it is hereby enacted, by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same,* That David Rittenhouse, Lindsey Coats, Anthony Levering, John Jones, of the Gulph Mill, Robert Curry, Isaac Potts, Joseph Paul, David Thomas, of Providence, Matthias Pennebaker, James Hockley, John Brooks, Jacob Light, Abraham Lincoln, Mordecai Miller, John Bishop, George Gardiner, John Mears, Charles Shoemaker, George Miller, Henry Haller, Samuel Baird and Frederick Cleckner, shall be, and they are hereby, constituted and appointed commissioners for clearing the navigation of the said river, and to carry all and singular the powers, rights, authorities and jurisdictions, severally given and granted to certain different sets of commissioners by the three several acts of Assembly, the titles whereof are herein referred to ; the first of them passed the fourteenth day of March, one thousand seven hundred and sixty-one, entitled “An act for making the river Schuylkill navigable, and for the preservation of the fish in the said river ;” the second passed the twenty-sixth day of February, one thousand seven hundred and seventy-three, and entitled “A supplement to the act, entitled “An act for making the river Schuylkill navigable, and for the preservation of the fish in the said river ;” and the third and last law passed the twenty-fourth day of March, one thousand seven hundred and eigh-

Commission-
ers named
for clearing
Schuylkill.

(t) For the act referred to in the title, see 1st vol. chap. 465, and for a particular reference to the supplements thereto, and to other acts respecting

this river, see the note there subjoined. See also the title *Schuylkill River*, in the index. (*Note to former edition.*)

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ty-one, entitled "A further supplement to the act, entitled "An act for making the river Schuylkill navigable, and for the preservation of the fish in the said river;" and that the said David Rittenhouse, Lindsey Coats, Anthony Levering, John Jones, of the Gulph Mill, Robert Curry, Isaac Potts, Joseph Paul, David Thomas, of Providence, Matthias Pennebaker, James Hockley, John Brooks, Jacob Light, Abraham Lincoln, Mordecai Miller, John Bishop, George Gardiner, John Mears, Charles Shoemaker, George Miller, Henry Haller, Samuel Baird and Frederick Cleckner, shall be henceforward taken and considered as the only commissioners for clearing the navigation of the same river, with all the powers, rights, authorities and jurisdictions, in the act and supplements aforesaid; and the commissioners in the said supplement, passed the twenty-fourth day of March, one thousand seven hundred and eighty-one, except such as are re-appointed by this act, shall cease to exercise any power, right, authority, or jurisdiction, under their said appointment in the last supplement aforesaid; and the said commissioners by this act appointed shall ask, demand, sue for, recover and receive, all the monies, goods securities and effects, which the said commissioners have, or are entitled to, in right of their appointment aforesaid, and make use of them for the purpose in this act mentioned.

SECT. III. *And be it further enacted by the authority aforesaid,* That the penalty of twenty pounds mentioned in the third section of the first act aforesaid, entitled "An act for making the river Schuylkill navigable, and for the preservation of the fish in the said river," and the fourth section of the act last aforesaid, entitled "A further Supplement to the act, entitled "An act for making the river Schuylkill navigable, and for the preservation of the fish in the said river," shall be recovered, by warrant, before the Chief Justice, or either of the Assistant Justices of the Supreme Court, or before any Justice of the courts of Common Pleas, or of the Quarter Sessions of the peace, who shall reside in the county wherein, or adjacent to which, the offences described in the third and fourth sections aforesaid shall be committed; the same penalty, when recovered shall be for the sole use of the informer.

Penalty, in
what manner
recoverable.

SECT. IV. And that the several commissioners in this act named shall attend to the duties of their appointment under this act, and the act and supplements aforesaid, *Be it therefore enacted by the authority aforesaid,* That each commissioner or commissioners in this act named shall take such part of Schuylkill, for the purpose of clearing, as is herein specially directed:

Commission-
ers, their
several
districts.

From the tide water, below the falls, to Spring mill, David Rittenhouse, Lindsey Coats, Anthony Levering, and John Jones, of the Gulph mill.

From thence to the mouth of Valley creek, Robert Curry, Isaac Potts, and Joseph Paul.

From thence to the mouth of Mingo creek, David Thomas, of Providence, and Matthias Pennebaker.

From thence to Berks county line, James Hockley, John Brooks, and Jacob Light.

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From thence to Beidler's mill, Abraham Lincoln, and Mordecai Miller.

From thence to the mouth of Tulpehocken creek, John Bishop, and George Gardiner.

From thence to the mouth of Maiden creek, John Mears.

From thence to the mouth of Tamaguary creek, Charles Shoemaker, and George Miller.

From thence to the coal mines, on Schuylkill, at Basler's saw-mill, Henry Haller, Samuel Baird, and Frederick Cleckner.

Power of a majority of commissioners.

SECT. V. And should any of the commissioners aforesaid die, or refuse to act, before the completing the business aforesaid, the majority of the said commissioners shall appoint other person or persons for executing the powers, rights, authorities and jurisdictions of this act, who, when appointed, and after acceptance of their appointment, shall receive the same wages, and be under the same regulations, with the other commissioners under this act.

Time and place assigned for meetings of the commissioners.

[Obsolete.].

[SECT. VI. *And be it further enacted by the authority aforesaid,* That the commissioners in this act mentioned are hereby required and enjoined to meet at the inn of Jacob Witz, in Potts town, Philadelphia county, at ten o'clock in the morning, on the first Tuesday in May next; and when a majority of such commissioners shall have assembled, they shall agree on some general plan for executing the powers, rights, authorities and jurisdictions, under this act, and the act and two supplements aforesaid, which said plan, as far as situation and circumstances concur, shall be directory to each other in clearing said river; and shall also meet at the same time of day and place, on the first Tuesday in June, July, August, September and October next, and at such meetings shall give a faithful account in writing, to each other, of the sums of money they have severally expended in the work aforesaid, and of the part of such work which they have completed; and in case any of the commissioners shall neglect or refuse to attend at any of the meetings aforesaid, on the days and times aforesaid, and at the place aforesaid, he shall pay the fine of five pounds, to be recovered by any informer, prosecuting for the same, and for the use of such informer, and in the same manner as the twenty pounds aforesaid, in the acts aforesaid, shall be recovered; and the Chief Justice and the Justices aforesaid, before whom the fine shall be recovered, are hereby, respectively, empowered to judge of the sufficiency or insufficiency of the excuse of such commissioner, and proceed accordingly.]

Penalty on neglecting to meet.

Treasurer appointed, his duty.

SECT. VII. And that the navigation of the said river may be obtained at as little expense as possible, *Be it further enacted by the authority aforesaid,* That Samuel Potts, of Potts town, is hereby appointed Treasurer for the said board of commissioners, who is authorized and empowered to draw out of the Bank of North-America, all such sums of money as shall be deposited in the same, for the purpose of improving the navigation of the said river, by the managers of the public lottery of this state, which same Samuel Potts shall pay the draughts on him made, by each of the same commissioners aforesaid, who, for such payment, shall be allowed ten shillings in the hundred pounds, and no more; that the said Samuel Potts, and each of the said commissioners, shall be accountable for the sum

Treasurer and commissioners shall

which he or they severally shall receive, and for which sums so received as aforesaid, together with the goods, securities, monies, and other effects, received from the commissioners under the supplement aforesaid, passed the twenty-fourth day of March, one thousand seven hundred and eighty-one, they shall account for to the Comptroller-General of this state, in the month of October next; and that each commissioner shall, whilst on the business aforesaid, receive for his services seven shillings and six-pence per diem, and no more, to be paid by the said Samuel Potts.

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account to the Comptroller-General.

Commissioners wages.

SECT. VIII. *And be it further enacted by the authority aforesaid,* That the Treasurer aforesaid shall, before he enters on the duties of his office, become bound to the President in Council, with two sufficient securities, in the sum of five thousand pounds, conditioned for the true and faithful performance of his trust.

Treasurer to give security.

SECT. IX. *And be it further enacted by the authority aforesaid,* That the said recited act, and the two supplements aforesaid, and every part and parcel thereof, except such parts as are herein altered or amended, shall be taken to be and remain in full force, virtue and effect, any thing herein contained to the contrary thereof in any wise notwithstanding.

Explanatory clause.

Passed 15th of March, 1784.—Recorded in Law Book No. II. page 267.

CHAPTER MLXX.

A SUPPLEMENT to an act, entitled “An act to enable William Clingan, Thomas Bull, John Kinkead, Roger Kirk, John Sellers, John Wilson, and Joseph Davis, to build a new court house and prison in the county of Chester, and sell the old court house and prison in the borough of Chester.” (u)*

SECT. I. WHEREAS the act, entitled “An act to enable William Clingan, Thomas Bull, John Kinkead, Roger Kirk, John Sellers, John Wilson, and Joseph Davis, to build a new court house and prison in the county of Chester, and sell the old court house and prison in the borough of Chester,” passed the twentieth day of March, in the year of our Lord one thousand seven hundred and eighty, hath not been carried into execution by the commissioners therein named.

SECT. II. *Be it therefore enacted, and it is hereby enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the*

(u) For the original act, see ante. chap. 890. This supplement was suspended by an act of the 30th of March, 1785; that suspension was taken off by an act of the 13th of March, 1786; by an act of the 25th of September, 1786, provision was made for removing prisoners from the old to the new gaol; by an act of the 3d of March, 1788, the district of country in which the county court house stands was erected into a county town; by another act of the same date, the commissioners were authorized to sell a lot, which they had purchased for a court house and prison; and by an act of the 26th of September, 1789, a part of the county of Chester was erected into a new county, called Delaware. The original act, above printed, varies the christian name of Taylor, from John to Isaac. (*Note to former edition.*)

1784. *same*, That John Hannum, esquire, John Taylor, esquire, and John Jacobs, be, and they hereby are, constituted and appointed commissioners, for the purpose mentioned and expressed in the act, entitled "An act to enable William Clingan, Thomas Bull, John Kinkead, Roger Kirk, John Sellers, John Wilson, and Joseph Davis, to build a new court house and prison in the county of Chester, and sell the old court house and prison in the borough of Chester," and that they, or any two of them, shall be, and they hereby are, empowered and authorized to carry the said act, and every part thereof into execution, as fully and amply, as by the before mentioned act the said William Clingan, Thomas Bull, John Kinkead, Roger Kirk, John Sellers, John Wilson, and Joseph Davis, or any four of them, might or could have done.

Commissioners appointed.

Proviso.

SECT. III. *Provided always, and be it further enacted by the authority aforesaid*, That the said John Hannum, esquire, Isaac Taylor, esquire, and John Jacobs, shall not have any power to build, or contract with any person to build or erect the buildings mentioned in said act, at a greater distance than one mile and a half from the Turk's head tavern, in the township of Goshen, in said county, and to the west or south-west of said Turk's Head tavern, and on or near the straight line from the ferry, called the corporation ferry, on Schuylkill, to the village of Strasburgh; any thing in this act, or the act to which this is a supplement, to the contrary notwithstanding.

Conditional clauses.

SECT. IV. *And be it further enacted by the authority aforesaid*, That the said John Hannum, esquire, Isaac Taylor, esquire, and John Jacobs, or any two of them, shall have no power to give possession of the gaol and court house in the borough of Chester, to any person or persons purchasing the same, until a new court house and gaol are erected as aforesaid; any thing in this act, or the act to which this is a supplement, to the contrary notwithstanding.

Repealing clause.

SECT. V. *And be it further enacted by the authority aforesaid*, That the said William Clingan, Thomas Bull, John Kinkead, Roger Kirk, John Sellers, John Wilson, and Joseph Davis, or any of them, shall not have any power to carry the act to which this is a supplement, into execution, and that so much thereof as is repugnant to this act, and no more, shall be, and the same is hereby, repealed and made void.

Passed 22d March, 1784.—Recorded in Law Book No. II. page 276.

CHAPTER MLXXIV.

An ACT to empower the owners of Greenwich Island, Wicacoa and Moyamensing meadows, to make a dam across the mouth of Hay creek, and another dam across Hollanders creek, at the stone bridge.

Passed 22d March, 1784.—Private Act.—Recorded in Law Book No. II. page 282.

CHAPTER MLXXVII.

1784.

An ACT to secure the persons employed in the building and fitting ships and vessels for sea, by making the body, tackle, apparel and furniture of such ships and vessels liable to pay the several tradesmen employed in building and fitting them, for their work and materials. (x)

SECT. I. **WHEREAS** the business of ship-building is a very important branch of the commerce of this state, and ought to receive all proper encouragement: And whereas the several tradesmen employed in this business are liable to losses, by reason that the persons employing them are frequently masters of ships, strangers, and persons having no fixed property in the country, and the ships and vessels by them built, repaired and fitted, are not liable to pay the amount of their bills, whereby their labour and materials have been taken to satisfy other debts, to their discouragement in carrying on so useful a mode of increasing the wealth of the state: For remedy whereof,

SECT. II. *Be it enacted and it is hereby enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same,* That ships and vessels of all kinds, built, repaired and fitted within this state, be, and they are hereby declared to be, liable and chargeable for all debts contracted by the masters or owners thereof, for or by reason of any work done, or materials found or provided, by any carpenter, blacksmith, mastmaker, boatbuilder, blockmaker, ropemaker, sailmaker, rigger, joiner, carver, plumber, painter, or shipchandler, for, upon, and concerning the building, repairing, fitting, furnishing and equipping such ship or vessel, in preference to any, and before any other debts due and owing from the owners thereof.

Vessels made liable for debts incurred by repairing.

[SECT. III. And in order to provide a speedy and adequate remedy for such tradesmen, as aforesaid, to recover debts contracted by any person or persons, for the use of such ship or vessel, *Be it enacted by the authority aforesaid,* That it shall and may be lawful for all and every of the said tradesmen to file a libel, in the court of Admiralty of this state, against such ship or vessel, her tackle, furniture and apparel, whereupon process shall issue, and such proceeding shall be had, towards the recovery of such debts, as are usually had in the courts of Admiralty for the recovery of mariners' wages, and other debts actually contracted upon the high seas, and within the jurisdiction of the court of Admiralty, notwithstanding such work was done, and such materials and articles were found and provided, at land, without the jurisdiction of the Admiralty.

Jurisdiction of the Admiralty of this state enlarged.

SECT. IV. *And be it further enacted by the authority aforesaid,* That all or any of the said tradesmen, to whom any ship or vessel is or shall be indebted for work done, or materials or other articles furnished and provided, may join in one libel for the recovery of all their debts, in the same manner that mariners are permitted, by the

Divers actions may be consolidated into one.

(x) By an act of the 7th day of December, 1789, the salary of the Judge of Admiralty for this state was abolished, as, by the operation of the constitution of the United States, the duties of the office had ceased, chap 1462. (*Note to former edition.*)

1784. usage of the Admiralty, to join together in one suit; and if more than one suit shall be brought against any ship or vessel by more than one such tradesman as aforesaid, the Judge of the Admiralty shall cause such actions to be consolidated into one, and give one definitive sentence or decree, comprehending all such debts as shall be demanded by all or any of the tradesmen aforesaid, and duly supported, either by libel as aforesaid, or by petition to the court, while one or more of such libels shall be depending.]

On giving security the vessel shall be discharged.

SECT. V. *And be it further enacted by the authority aforesaid,* That if upon any such libel or petition as aforesaid, the master or owner of such ship or vessel, or his or their agents, shall appear in the said court, and enter into stipulation, with sufficient sureties, to answer all the demands aforesaid, which shall be then filed against such ship or vessel, the said ship or vessel, shall be discharged from the arrest, and shall be permitted to proceed on her voyage.

Proviso.

SECT. VI. *Provided always nevertheless,* That no ship or vessel shall continue to be liable and chargeable for such debts, to the tradesmen aforesaid, longer than the time which shall intervene between the contracting of such debts, and the time of her proceeding to sea, next after the work shall be done or the materials and articles furnished and provided.

Passed 27th March, 1784.—Recorded in Law Book No. II. page 289.

CHAPTER MLXXVIII.

[See vol. I. chap. 56. And the note sub-joined pa. 14. for a reference to all the laws on this subject.]

An ACT to regulate fences, and to appoint appraisers in each township in the counties of Bedford, Northumberland, Westmoreland, Washington and Fayette, and to encourage the raising of swine.

SECT. I. WHEREAS, by an act of General Assembly of the late province of Pennsylvania, entitled “An act for erecting pounds in each township,” passed the tenth day of May, one thousand seven hundred and twenty-nine, and an act, entitled, “An act concerning cattle, horses and sheep,” passed the fourth day of March, one thousand seven hundred and sixty-three, the heights of a lawful fence therein mentioned are found to be insufficient: And whereas a supplement to an act, entitled “An act to prevent swine running at large,” passed the tenth day of May, one thousand seven hundred and twenty-nine, is found to be injurious to great part of the frontier counties of this state: For remedy whereof,

Fences, their dimensions.

SECT. II. *Be it enacted, and it is hereby enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same,* That all fences erected in this state, within the limits herein after mentioned, shall be made and erected in the following manner, that is to say: all worm fences shall be four feet and an half high, with sufficient stakes and riders added thereon, and that the under rail in each pannel shall not exceed five inches from the surface of the ground, and the first four rails in each pannel shall not exceed five inches wide between the rails; and that the said fences shall have at least four

feet worm ; and that all post and rail fences shall be four feet and an half high, and the distance between the rails as aforesaid.

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SECT. III. *And be it further enacted by the authority aforesaid,* That, from and after the passing of this act, it shall not be lawful for any person or persons to kill, take or carry away, any swine, shoat or pig ; but in case of trespassing through or over any lawful fences as aforesaid, to take and impound the same, and to obtain and recover such damages, and in the same way and manner, as is herein after directed.

SECT. IV. And to the end that impartial justice may be speedily done, and obtained by any person or persons, who may think him, her or themselves, aggrieved by the trespassing of swine, or any other creature or creatures : *Be it enacted, and it is hereby enacted by the authority aforesaid,* That the inhabitants of each township, within the counties herein after mentioned, are hereby empowered and required to meet on the third Saturday of the Month of March, yearly, being the day appointed by law for chusing supervisors of the highways, and then and there to elect by ballot two substantial freeholders, to be appraisers in their respective townships for the ensuing year, whose duty shall be, upon the demand of any inhabitant within their respective townships, to go and view the fences where any damages are supposed to be done ; and if they find, upon view of the same, the fences to be sufficient, agreeable to the dimensions aforesaid, then, and in such case, they are to appraise and ascertain the damages done, and make return of the same to the next Justice of the peace, who is hereby empowered to award judgment and execution, as the case may require : and in case upon the said view as aforesaid, the fences shall be found insufficient, the said appraisers, in like manner, shall make report to the next Justice as aforesaid, who shall give judgment against the plaintiff for the costs of such view, and, upon refusal of payment, to award execution for the same, as in other cases.

Appraisers shall be chosen on the third Saturday of March, yearly.

Their duty.

SECT. V. *And be it further enacted by the authority aforesaid,* That the constable or constables shall attend and open said election, and shall call to his or their assistance, at the opening the election as aforesaid, two reputable freeholders, who shall be judges of said election ; and whose duty shall be to receive the tickets of such election ; and when the election is closed, to sum up the same, and give a certificate of the names of the two freeholders highest in votes to be appraisers for the ensuing year. And the said constable is hereby required to return the same at the next court of Quarter Sessions, to be held for the county wherein such election is held, to the Clerk of the Sessions, who is hereby empowered to send notice to such freeholders, so elected, to repair to the next Justice of the peace, and there take the following oath or affirmation, which Justice is hereby empowered to administer the same ; to wit, " I, A. B. do swear, or affirm, that I will truly and faithfully appraise all damages done by trespassing creatures within my township, that may be done by creatures breaking over, or through, any lawful fences as aforesaid, agreeable to this act, when thereunto required."

Constable shall open election.

Appraisers qualification

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Wages of
each
appraiser.

SECT. VI. *And be it further enacted by the authority aforesaid,* That each appraiser shall be entitled to three shillings per day for their trouble, to be recovered before the Justice as aforesaid ; and the Clerk of the Sessions, for the notice, writing, sealing and delivering, shall be entitled to three shillings to be paid out of the county treasury, by an order from the commissioners ; and the Clerk shall enter the names of the appraisers so appointed on the Sessions docket.

Penalty on
neglect of
appraisers
to assume
their office.

SECT. VII. *And be it further enacted by the authority aforesaid,* That in case any of the appraisers, so elected as aforesaid, should neglect or refuse to appear, he or they being duly notified thereof by the Clerk as aforesaid, and take the duty of their office, required by this law, upon them, then, and in such case, the said person or persons, so refusing or neglecting as aforesaid, shall forfeit and pay the sum of twenty shillings, unto the overseers of the poor of such township, to be recovered by the said overseers in a summary way, as debts are under forty shillings, and to be appropriated for the use of the poor of said township ; and upon any such refusal as aforesaid, any two Justices of the peace in said county are hereby empowered to appoint others in their place, to serve until the ensuing election ; and the said appraisers so appointed shall have all powers, and be under all such forfeitures and penalties, as if they had been duly elected according to this act.

Power of
appraisers.

SECT. VIII. *And be it further enacted by the authority aforesaid,* That the said appraisers shall have full power to act, and view all partition fence or fences, where any difference may happen or arise, within their respective districts ; and the aforesaid appraisers in each township, respectively, shall be the sole judges of the charges to be borne by the delinquent, or by both, or either party, and of the sufficiency of all fences, whether partition fences or others ; and all damages awarded to be recovered in the same way and manner, as is before directed in other cases.

Proviso.

SECT. IX. *Provided always.* That nothing in this act shall be taken or deemed to extend to or take effect in any other county of this state, than the counties of Bedford, Northumberland, Westmoreland, Washington and Fayette, any thing in the before recited act to the contrary in any wise notwithstanding.

Repealing
clause.

SECT. X. *And be it further enacted by the authority aforesaid,* That so much of the Supplement to the act, entitled " An act to prevent swine running at large," passed the tenth day of May, one thousand seven hundred and twenty-nine ; and so much of an act for erecting pounds, passed the tenth day of May, one thousand seven hundred and twenty-nine ; and so much of the act, entitled " An act concerning cattle, horses and sheep," passed the fourth day of March, one thousand seven hundred and sixty-three, as is by this act altered or supplied, is hereby made null and void, any thing in the before recited acts or supplement to the contrary in any wise notwithstanding, so far only as the same respect the counties before mentioned.

CHAPTER MLXXIX.

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An ACT for regulating of hawkers and pedlars. (y)

SECT. I. WHEREAS many idle and vagrant persons may come into this state, and under pretence of being hawkers or pedlars, may greatly impose upon many persons in the quality and price of goods, and also may commit felonies and other misdemeanors : For preventing such inconveniences and evil practices, and to the intent that no persons may be admitted to follow the business of hawkers or pedlars within this state, but those who are of known honesty and civil behaviour,

SECT. II. *Be it enacted, and it is hereby enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same,* That, from and after the passing of this act, no person whatever shall follow or employ him, her or themselves, in the business or employment of a hawker, pedlar, or petty chapman, within this state, until such persons shall have obtained a recommendation from the Justices of the county court where he or she dwells, certifying their opinion of the honesty of the person recommended, and that he or she intends to travel with one or more horse or horses, or other beasts of burthen, or on foot, and thereupon shall have obtained a licence from the President or Vice-President of the Supreme Executive Council of this state, and shall have given bond in the Prothonotary's office of the said county court, to the said President or Vice-President, him or herself in the sum of one hundred pounds, and two freeholders sureties in the sum of fifty pounds each, conditioned, that such person shall be of good behaviour during the continuance of said licence, which licence shall continue for one whole year; and for which licence there shall be paid, for the support of government, the sum of five pounds, by every person obtaining a licence to travel with a horse or other beast of burthen, and the sum of forty-five shillings, for every person licensed to travel on foot.

Hawkers,
&c in what
manner they
shall obtain
a licence.

Charges of
obtaining a
licence.

SECT. III. *And be it enacted by the authority aforesaid,* That if any person, not being qualified as aforesaid, shall be found hawking, peddling, or travelling from place to place, through any part of this state, to sell goods, or who shall expose to sale any foreign goods, wares or merchandize, in any of the open streets of the city and suburbs of Philadelphia, or in any of the open streets in any of the county towns, within this state, he or she, so offending, shall forfeit the sum of ten pounds one moiety whereof to this state, for the support of government, and the other moiety to the person who sues for the same, to be recovered by action of debt, bill, plaint or information, in any court of record within this state.

Penalty on
a hawker or
pedlar not
qualified.

SECT. IV. *Provided always, and it is hereby further enacted,* That nothing herein contained shall extend, or be construed to ex-

Provido.

(y) This subject had before been regulated by an act passed on the 26th of November, 1779; which, however, was limited to continue no longer than the war. For another law on the subject of the act in the text, see chap. 2027. [None but citizens to be licensed &c.] (Note to former edition.)

1784. tend, to hinder any person or persons from selling, or exposing to sale, any sort of goods, wares or merchandize, in any public market or fair within this state, at any other time or times than is or are appointed by law for holding the same, or to hinder any person or persons from carrying about, from town to town, and from house to house, any goods, wares or merchandize, being of the growth, product or manufacture of this state, but that such person or persons may do therein, as they lawfully might have done before the making of this act, any thing herein contained to the contrary notwithstanding. And if any person hawking, peddling or travelling, as aforesaid, except as before is excepted, shall refuse to produce and shew his or her licence to any civil officer upon demand, such person shall forfeit and pay the sum of twenty shillings, for the uses aforesaid, to be recovered before any Justice of the peace, as debts under forty shillings are now recoverable.

Explanatory
clause.

SECT. V. *And be it further enacted by the authority aforesaid,* That the true intent and meaning of the proviso in this act contained is, and the same shall be so taken and construed that no person whatever, whether he or she be qualified according to this act or not, shall expose to sale in any of the public market places, within the city of Philadelphia, the district of Southwark, or the township of the Northern-Liberties, or any of the county towns or boroughs within this state, or in the open streets or highways thereof, except at the times appointed by law, for holding fairs therein, any goods, wares or merchandize, other than the growth, produce and manufacture of this or the adjoining states, under the penalty of ten pounds, to be recovered in the manner, and for the uses, in this act contained.

Repealing
clause.

SECT. VI. *And be it further enacted by the authority aforesaid,* That the act of General Assembly, entitled "An act for regulating pedlars, vendues, &c." passed on the fourteenth day of February, which was in the year of our Lord, one thousand seven hundred and twenty-nine, (thirty)* so far as the same relates to pedlars, hawkers and petty chapmen, be, and the same is hereby repealed.

[* Chap. 307,
vol. 1. page
197.]

Passed 30th of March, 1784.—Recorded in Law Book No. II. page 295.

CHAPTER MLXXX.

[Supplement
post. chap.
1995.]

An ACT for continuing the arch over the public common sewer of the city of Philadelphia, through the middle of the dock, and covering the same with earth, from Walnut-street to the foot bridge, and for raising a fund for defraying the expenses thereof, and for other purposes.

SECT. I. WHEREAS the space occupied by the north western branch of the dock, and the streets on each side thereof, was, by agreement between the first Proprietary and the settlers to whom the adjacent ground fell by lot, upon the partition of the city, left open, as well with the views of public benefit, by preserving a body of water in the city to extinguish fires, to keep open a drain for the land floods, and for landing places, as to private advantage, by in-

creasing the value of the remaining parts of the said lots, by the contiguous situation of the said dock: And whereas divers attempts have been made, as well at the expense of the owners of the said adjacent lots, as of the public, to keep the said dock in such order, as to answer the ends originally intended, but it has been found by experience, that the expense of cleaning the same, and keeping it in such order, is vastly greater than all the public and private benefits resulting from the landings thereon: And whereas the drain through the said dock, into the river, is, by the manner of regulating the streets of the city, become absolutely necessary to carry off the floods, which would otherwise overflow the most populous and central parts thereof, and by means of the filth and rubbish, which are carried by the rains from all quarters of the city into the dock, the same is nearly filled up, and has become a grievous nuisance, dangerous to the health of the inhabitants, and requires a speedy remedy: To remedy, therefore, these mischiefs,

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SECT. II. *Be it enacted and it is hereby enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same,* That the commissioners for paving the streets of the city of Philadelphia shall and they are hereby authorized and required, with all convenient expedition, to employ the necessary labourers, workmen and artificers, and to provide all requisite materials, and to cause a good substantial arch of brick, founded on strong stone walls, and floored with plank or logs, at least five inches thick, to be erected and turned along the middle, or near the middle, of the dock, which arch shall be at least nine feet wide, and of a height sufficient to give vent to the waters, and shall begin at the end of the present common sewer, at Walnut-street, and be extended southeastward, to the main branch of the dock, adjoining the public landing, and shall cause the earth over the same to be levelled, so as to form a public street or highway, which shall for ever hereafter be and remain open, for the public use, and shall be called and known by the name of Dock-street.

Commissioners for the city shall cause an arch of brick to be erected over the dock.

SECT. III. *And be it further enacted by the authority aforesaid,* That the regulators of the city of Philadelphia shall have power to determine all disputes with the adjacent land owners, concerning the width of the said Dock-street, and the commissioners aforesaid shall remove nuisances and obstructions therein, and generally exercise the same authority in all things, touching the same, as by the laws of this commonwealth they already have, or hereafter may have, touching the other streets, lanes and alleys of the city of Philadelphia.

Regulators, their power to determine disputes.

SECT. IV. *And be it further enacted by the authority aforesaid,* That the expenses attending the making the said common sewer, covering the same with earth, and making and regulating the said street, shall be raised, levied, collected and defrayed, in the same manner, as the monies are by law to be raised, levied and collected, for defraying the expense of regulating, pitching, paving and cleansing the streets of the said city.

Expenses of making common sewer, &c. how to be raised.

SECT. V. And whereas the inhabitants of that part of Market and Fourth-streets, which is subject to a flood of water collected from various parts of the city in times of heavy rains, insomuch that

1784. the cellars are frequently overflowed, have sustained great loss of effects, and detriment to their health, occasioned by putrid exhalations from the same in the most sickly seasons, and the conduit being proved not large enough to carry off the redundant water, the nuisance is aggravated as the city increases, and the streets are regulated: And whereas it is just and reasonable that the said inhabitants should be relieved: For remedy whereof,

Street commissioners authorized to enlarge the arch.

SECT. VI. *Be it enacted by the authority aforesaid,* That the said street commissioners be, and they are hereby, authorized and empowered to enlarge the arch from Market, or High-street, where it may be requisite, to allow a free passage for the redundant water, in such manner as shall remedy the evil aforesaid effectually.

SECT. VII. *Provided always,* That the monies raised, or to be raised, for the purposes aforesaid, shall not exceed the sum of five thousand pounds.

Passed 30th March, 1784.—Recorded in Law Book No. II. page 298.

CHAPTER MLXXXIII.

An ACT for opening the Land-Office, for granting and disposing of the unappropriated lands within this state.

SECT. I. WHEREAS the estates of the late Proprietaries of Pennsylvania were, by a law, passed the twenty-seventh day of November, in the year one thousand seven hundred and seventy-nine, vested in this commonwealth: And whereas, by a subsequent law passed the ninth day of April, one thousand seven hundred and eighty-one, the Land-Office was opened, for the completing all such titles as had commenced before the tenth day of December, one thousand seven hundred and seventy-six, and inasmuch as it is just that all the citizens of this state, holding lands, should be placed on the same footing, with respect to their titles, and the legal demands of government, and the time being now come when it appears necessary, not only to increase the population of this state, but to enable government to draw every possible advantage from the estates so vested in them:

SECT. II. *Be it therefore enacted, and it is hereby enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same,* That the Land-Office shall be opened, for the lands already purchased from the Indians, on the first day of July next, at the rate of ten pounds for every hundred acres, with the usual fees of granting, surveying and patenting, excepting such tracts as shall be surveyed westward of the Allegheny mountain, which shall be three pounds ten shillings, and no more; and that the several officers of the Land-Office are hereby fully empowered and directed to do and perform every act and thing incident, or in any wise appertaining, to their said offices, with respect to receiving, filing and entering locations, granting warrants on the same, receiving the consideration, directing copies of warrants, or other rights, receiving returns, and issuing patents of confirmation, as heretofore, agreeable to the former customs and usages of the said offices.

Land-Office to be opened on the 1st of July, 1784.

SECT. III. *And be it further enacted by the authority aforesaid,* 1784.
That every applicant for lands shall produce to the Secretary of the Land-Office a particular description of the lands applied for, with a certificate from two Justices of the peace of the proper county, specifying whether the said lands be improved or not, and, if improved, how long since the said improvement was made, that interest may be charged accordingly.

Each applicant to produce a description.

SECT. IV. *And be it enacted by the authority aforesaid,* That the quantity of land granted to any one person shall not exceed four hundred acres, and that all grantees under this act, as well as all claimants of unpatented lands whatsoever, be, and they are hereby, confined to the same time with respect to patenting, as is limited and directed by the law of this state, entitled "An act for establishing a Land-Office, and for other purposes therein mentioned," and the law, entitled "An act to vest certain powers in the President of this state, together with the other officers therein named, and for other purposes therein mentioned."

Grant to one person shall not exceed 400 acres.

SECT. V. *And be it further enacted by the authority aforesaid,* That all persons possessed of old rights, unsatisfied warrants, or other grants from the late Proprietaries, be, and they are hereby confined, in locating the same, to the lands already purchased from the Indians; and in order to prevent disputes, touching the same, it is hereby enjoined on the commissioners appointed for making a further purchase, that they ascertain, in their negotiations with the Indians, with the greatest possible precision, the line between the lands already purchased and those that shall be by them purchased.

Old rights, &c. confined to former purchases.

(2)

[SECT. VI. *And be it further enacted by the authority aforesaid,* That when the Indians shall be satisfied for the unpurchased lands, within the limits of this state, the Supreme Executive Council shall give official information thereof to the Surveyor-General, who shall, thereupon, appoint district surveyors for laying out all such lands within the said purchase, as shall be found fit for the purpose of cultivation, into tracts of not more than five, nor less than two hundred, acres each, numbering the same on the general draught or plot of each district; and so soon as two hundred lots are surveyed, the said Surveyor-General, together with the Secretary and Receiver-General of the Land-Office, or their lawful deputies, by them respectively appointed, shall proceed to sell the same by public auction, at such place or places, and at such times, and subject to such regulations, as the Supreme Executive Council may direct. And upon the payment of the full consideration bid at such sales, in the certificates herein after mentioned, specie, or money of this state, together with all fees, in specie, of surveying and patenting, a title shall be granted in the usual manner and form, for the land so sold. But in case the vendee should desire further time, for the payment of a moiety of the said consideration, two years shall be allowed him, on his paying all fees, and giving bond for the remaining moiety due to the state, with lawful interest, in specie, or money of this state only, and upon this last payment his title shall be completed, before

Surveyor-General shall appoint district surveyors, who shall lay out lands.

(2) This section explained, *postea*, by an act of the 21st December, 1784.
(Note to former edition.)

1784. which time the lands shall stand charged with, and be subject to said payment. (a)]

SECT. VII. And whereas the citizens of this state, as well as the late officers and soldiers of the same, have long laboured under manifold inconveniences, by reason of the many just debts due to them from the United states remaining unpaid, and inasmuch as it is the duty of the legislature of this state to see justice done to them :

Certificates
receivable in
payment.

SECT. VIII. *Be it therefore enacted by the authority aforesaid,* That the Receiver-General of the Land-Office be authorized and required to receive in payment, for all lands sold and granted, in pursuance of this act, as well in the old purchase, as in that which is about to be made (the lands which are appropriated for the redemption of depreciation certificates, and the donation lands, only excepted,) all certificates of depreciation granted to the officers and soldiers of the late Pennsylvania line, the certificates for money loaned to the United States by citizens of this state, or granted in the name of or for the use of such citizens, and such certificates as have been or may hereafter be granted to the officers and soldiers of the late Pennsylvania line, and all other depreciation certificates granted to officers and soldiers of this state, and all certificates for commutation and for arrearages of pay, and the certificates of the commissaries, quarter-masters and forage-masters ; also certificates for debts due to the citizens of this state from the United States, or from this state, when liquidated by the proper officers of the continent, or of this state, respectively, with all the interest due on the same at the day of payment ; all such certificates which remain unliquidated to be reduced to specie value, agreeably to the continental scale of depreciation, by the commissioner of loans, or by some continental officer, or an officer to be for that purpose appointed, before they are offered in payment at the said Receiver-General's office, in order that the United States may be charged with the same ; and that gold, silver, and the paper money of this state, shall be receivable at the said office from all applicants whatsoever, but that those applicants, who are not citizens of this state, shall be restrained in their payments to specie and Pennsylvania money alone : *Provided always,* That no certificate be received from any person, who was not at the time of issuing such certificate a citizen of this state, and that no certificate be received that hath been alienated, transferred, or sold by any person, not a citizen of this state, to a citizen of this state. And the Receiver-General is hereby enjoined and required, in all cases of doubt, to make strict enquiry touching the right of citizenship in the parties applying, either by the oath of the party (which he is hereby empowered to administer,) or otherwise, as to him shall seem meet.

Exception.

Receiver-
General
shall account
with Comptroller-Gen.

SECT. IX. *And be it further enacted by the authority aforesaid,* That the Receiver-General shall, at the time of settling his accounts in the Comptroller-General's office, render and pay over all certi-

(a) The sale by auction, and the allowance of credit for the purchase money, were prohibited by an act of the 21st of day December, 1784. (Note to former edition.)

ates by him received, unto the Comptroller-General, and in his accounts which he shall render, for the aforesaid purpose, he shall distinguish between the several payments he may receive in specie, in Pennsylvania money, and in the certificates aforesaid, with the interest due on each certificate at the time he may receive the same, which time of receiving, and the interest due, shall be indorsed on the back of each certificate respectively; and the said Comptroller-General shall, and he is hereby authorized and directed to pass to the credit of the cash account of the said Receiver-General, all such certificates so produced, as it shall appear have been received by him as aforesaid, together with the interest thereon, to the time he may have received the same. And the said Receiver-General shall, once in every month, pay and deliver over to the Treasurer of this state all such monies as shall be received by him, by virtue of this act.

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 neral, and
 pay over all
 certificates,

SECT. X. *Provided always*, That the said surveyor or surveyors, Proviso. so appointed, or to be appointed as aforesaid, shall have and receive, for their trouble and expense of surveying, paying chain-carriers, markers, returning the survey of each and every survey within the purchase to be made from the Indians, with a complete draught or plot of the same, three pounds ten shillings, to be paid by the purchaser in specie, by adding the said sum to the amount of sales of each and every tract.

Passed 1st April, 1784.—Recorded in Law Book No. II. page 313. (b)

PART I.

(b) The importance of the following note must be an apology for its length. It is the editor's desire to lay before the public a connected view of the land titles of Pennsylvania from its first settlement to the present time; an attempt of equal difficulty and interest. That it will be free from errors, is perhaps rather to be wished than expected; as, from the lapse of time, some material documents, once known to have existed, can no longer be traced. Fortunately, however, much of what may be now considered as depending upon tradition, is more the subject of curiosity than of real utility. The public records furnish ample materials of all that is of moment at the present time.

The royal charter from Charles the Second to William Penn, bears date at Westminster, March 4th, 1681, in the thirty third year of the reign of that king. The extent and limits of the territory of Pennsylvania may be seen in the charter itself, in the Appendix to this work; and in the course of the note, its present boundaries, as settled with the adjoining states, or enlarged by purchase, will distinctly appear.

It were needless, at this time of day, to question the validity of royal charters. A principle had obtained among the European nations, that a new discovered country belonged to the nation

whose people first discovered it. Eugene the 4th, and Alexander the 6th, successively granted to Portugal and Spain all the countries possessed by Infidels, which should be discovered by the industry of their subjects, and subdued by the force of their arms; and we are told, that no person, in the fifteenth century, doubted that the Pope, in the plenitude of his apostolic power, had a right to confer it; and all Christian princes were deterred from intruding into the countries those nations had discovered, or from interrupting the progress of their navigation and conquests. But William Penn, although clothed with powers as full and comprehensive as those possessed by the adventurers from Portugal and Spain, was influenced by a purer morality, and sounder policy. His religious principles did not permit him to wrest the soil of Pennsylvania by force from the people to whom God and nature gave it, nor to establish his title in blood; but under the shade of the lofty trees of the forest, his right was fixed by treaties with the natives, and sanctified, as it were, by incense smoking from the calumet of peace.

The settlement of the Swedes and Dutch on the lands near the river Delaware, and their subsequent subjection to the English government, previ-

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ous to the royal grant to William Penn, are the subjects of general history. The Indian deed for the purchase made by the Dutch, of the lands between Bombay hook and Cape Henlopen, is now the property, and in possession, of the state of *Delaware*. The purchases made by William Penn, and his successors, are of no small importance in the consideration of the land-history of Pennsylvania.

It was a principle adopted in all new settlements, that the laws of the mother country, at least so far as they are not inconsistent with the situation and circumstances of the infant colony, should have a binding force until altered by the authority of the new government. But that binding force arises only from the necessity which supposes that they receive those laws under which they lived before their settlements, into their new plantations, and agree to be governed by them for want of another law. But in the instance of the grant of Pennsylvania, it was incorporated in the charter "That the laws for regulating and governing property within the said province, as well for the descent and enjoyment of lands, as likewise for the enjoyment and succession of goods and chattels, &c. shall be and continue the same, as they shall be for the time being, by the general course of the law of England, until the said laws shall be altered by the said William Penn, his heirs or assigns, and by the freemen of the said province, their delegates, or deputies, or the greater part of them." It is clear, therefore, that from the date of the charter, until acts of assembly were made to alter the same, lands within the province descended according to the course of the common law. Such is still the rule, as will be seen in the course of this work, in cases omitted by the intestate laws of Pennsylvania. See 4 Dallas, 64.—2 Binney, 279.

William Penn, being possessed of the absolute Proprietorship of all the lands in the province, so far as the charter, independent of his Indian purchases, could vest such right, and the consequent right, (defined in the 17th section of the charter,) to parcel them out among purchasers, to be holden of himself and his heirs, "by such services, customs and rents, as to him or them should seem fit, and not immediately of the crown," sold large tracts of land to persons who were called *first purchasers*. These sales, it is believed, amounted to considerably more than three hundred thousand acres.—The price for which these lands were sold, was forty shillings sterling for one hundred acres,

and one shilling, quit rent. These grants or sales have been since denominated *old rights*, and had peculiar privileges annexed to them, which will be immediately detailed. They had no location, but were to be surveyed any where in the province. There were three lists of original purchasers; but only the two first were filed in the Land-Office; and the authenticity of the third list, by reason of its not having been filed with the public records, was questioned before the revolution, by the proprietary officers.

In the conditions and concessions, agreed upon between the proprietor & first purchasers, (which may be seen in the appendix,) it was stipulated, "that as soon as they should arrive, a certain quantity of land, or ground plat should be laid out for a large town, or city, in the most convenient place upon the river for health and navigation, and that every purchaser should have, by lot, so much land therein, as should answer to the proportion which he had bought, or taken up upon rent.—That the proportion of lands that shall be laid out in the first great town or city, should be after the proportion of ten acres for every five hundred acres purchased, *if the place will allow it.*"

Accordingly, when the first colony sailed from England, in October, 1681, certain commissioners were appointed to execute the conditions on the part of William Penn; that is, to lay out the great town, and to proceed to survey the country lands. This commission remains in the office.

It is known that difficulties existed with respect to the construction of these concessions and conditions; and the place of the great town was not fixed by these commissioners. No place could be found which would bear a town of six or seven thousand acres, the proportion to the lands already purchased, if such had been the construction of the concessions and conditions; and if the idea of a city of such extent had not been absurd and impracticable. Tradition tells us, therefore, that the commissioners did nothing but explore the country till William Penn's arrival. What knowledge they had gained of it they laid before him; and after deliberation, and, it must now be presumed, upon consultation with the settlers, he laid out a town of about two square miles, or twelve hundred and eighty acres, nearly as the city of Philadelphia now stands. The whole construction of the great town was therefore altered. The city was divided into lots of different sizes, and a large tract adjoining it, was surveyed, and called

the Liberties : and out of the city and Liberties the first purchasers were to have their two per cent.

Not a single memorial can be found of this plan, nor any record of the alteration, or any written evidence of the consent of the inhabitants to the new arrangement ; but a regular series of uniform facts, upon the books of the Land-Office, establish it beyond a doubt.

The river Schuylkill divided the Liberties into two parts ; the lots beyond the Schuylkill were of a less value than those on the town side ; and it is remarkable, that the Liberty lands, without a single exception, laid out on the town side of the Schuylkill, were in proportion of eight acres to five hundred acres, and the warrants are uniformly for 492 as of country land, and eight acres in the Northern Liberties, and in the same proportion for larger purchasers ; and those whose liberty land lay beyond Schuylkill, in the western Liberties had their warrants for 490 acres of country land, and 10 acres of liberty land. It is therefore presumed by those, whose age and information give weight to the fact, that one fifth part taken from the holders in the Northern Liberties made up the city plot, and the superiority in value made up for the deficiency in quantity, and time has amply realized their foresight.

The city of Philadelphia was laid out, according to Proud's assertion in the end of the year 1682. But the most prevalent opinion is, that the plan was not completed until the month of June, 1683. As the ground chosen for the site of the city was claimed by some Swedes, the proprietor gave them in exchange for it, a larger quantity of land at a small distance from it.

William Penn, in a letter to the society of free traders, dated August 16th, 1683, writes thus (see his select works :) " Philadelphia, the expectation of those that are concerned in this province, is *at last laid out* to the content, &c.—I say little of the town itself, because a plat from it will be shewn you by my agent, in which those who are purchasers of me will find their names and interests, &c.

" For your particular concern, I might entirely refer you to the letters of the president of the society ; but this I will venture to say, your provincial settlement, both within and without the town, for situation and soil, are without exception :—Your city lot is a whole street, and one side of a street from river to river, containing near one hundred acres, not easily valued ; *which is besides your four hundred acres in*

the city Liberties, part of your twenty thousand acres in the country, &c."

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When the city plan was made out, two large lots were laid down for two purchasers of twenty thousand acres ; others to suit the purchasers of ten thousand, five thousand, one thousand, five hundred and less, and numbered on the draft, and some mode was devised for drawing the names of the purchasers, with the number, of the size belonging to each.—Thus William Penn, junr. drew No. 1, and the Society of Free Traders drew No. 5.

There were but three purchasers of twenty thousand acres, viz. The Society of Free Traders, William Penn, junr. and Letitia Penn. The lots of the two latter were disputed, and after several trials by jury, it is said they have obtained but 214 feet in breadth from Delaware front street to Schuylkill. The lots of the purchasers of ten thousand acres, bore no manner of proportion to the foregoing.—They had six lots of 102 feet in breadth from second to third, and from third to fourth street, on *each front*, that is Delaware front, second and third streets, and Schuylkill front, second and third streets, not amounting to more than six acres—Nicholas Moore and John Marsh, two of these great purchasers, drew on Delaware front, No. 6 and 7.

Purchasers of five thousand acres had two lots, one on front street 102 feet in breadth, extending from front to second street, and one on high street, 132 feet in breadth, and extending half the depth, northward towards Mulberry street, or southward towards Chesnut street, or about 300 feet, being less than two acres.

Purchasers of 1000 acres had two lots, one of twenty, or twenty-one feet in breadth on front street, extending to second street, and the other on high street, believed to be 32 feet, by half the depth to the next street.

Purchasers of 500 acres had lots on the back streets, as all the streets were called, except front, or high streets, 49 1-2 feet in breadth, by half the depth to the next street, or thereabouts.—This is a general outline, as far as it can now be ascertained, of the regulations of the city lots. Holmes' printed map, in a very mutilated state, from long use, is yet remaining in the Surveyor-General's office, but there is also there a correct copy on parchment. The names of the first purchasers, annexed to the map, which is the original used, and referred to by the commissioners of property, must soon disappear, if not copied. The editor has taken a correct copy, which may be

1784. given in the appendix, if it shall be deemed necessary or useful. In this place it is necessary to refer only to the following parts of the printed list, viz.

"The purchasers from one thousand acres and upwards, are placed in the fronts and high streets, and begin on Delaware front, at the south end, with No. 1, and so proceed with the front to the north end, to No. 43."

Then follows the list of names who drew the 43 lots or numbers.

"The high street lots begin at No. 44, and so proceed on both sides of the high street, upwards to the centre square."

Then follow the names of the persons who drew the lots, amounting to 39 lots.

"Here follow the purchasers under one thousand acres, and placed in the back streets of the front of Delaware, and begin with No. 5, on the southern side, and proceed by numbers, as in the draft."

Then follow the names of the persons who drew the lots, the number of lots, 142.

Then follow the lots of Schuylkill front. At the centre of the city, the purchasers from one thousand acres and upwards, are placed in the fronts and high streets, and begin on Schuylkill front at the south end with No. 1, and so proceed with the front to No. 43."

Here follow the names of the persons who drew the 43 lots, and it is to be remarked, that the first seven names on both lists are the same, viz. William Penn, junr. No. 1. William Lowther, No. 2. Lawrence Growdon, No. 3. Philip Ford, No. 4. The society No. 5. Nicholas Moore, No. 6. and John Marsh, No. 7. And it is presumed these were the large lots appropriated to the purchasers of twenty and ten thousand acres.

"The high street lots begin at No. 44, and so proceed on both sides of that street to the centre square."

Then follow the names to the lots, in number 43, but some are blank, and have no names annexed.

"Here follow the purchasers under 1000 acres, placed in the back of the front on Schuylkill, and begin on the southern side with No. 1, and so proceed by the numbers as in the draught."

Then follow the names annexed to the lots, the lots being 149 in number, but several are blank, without names annexed, and several names in manuscript, where the printed list has been worn. The whole is thus headed, "Directions of reference in the city draught of Philadelphia, to the lots of the purchasers, &c. by way of numbers,

being too small to insert their names, so that by the number, the lots may be known." It is to be assumed as a principle, of which the evidence is abundant and conclusive, That liberty lands were always considered as part of the quantity purchased, and were taken out of it when the warrant issued for the country land; but the city lots were considered as *appurtenant* to the purchase, but no part of it; and in the lessee of Hill, v. West, and lessee of Moore v. West, in the supreme court, December term, 1804, it was held, that the right to city lots was so connected with the first purchases, that by a general deed, made in 1704, by first purchasers of 5000 acres, with the *appurtenances*, city lots, incident thereto, though previously surveyed, will pass together with the liberty-lands, unless a contrary intention can be shewn. MSS. Reports.

That this was the course of the Land-Office, is evident, from innumerable records; but it is ascertained only from such evidence, and from tradition; as it has been already stated, that no trace can now be found, of any written documents, to show when, and in what manner, these important transactions were settled between the proprietor and the purchasers.

In the minutes of the commissioners of property, Book II. page 22. upon application to them for a city lot, the following entry is to be found. The *concessions* only relate to the *liberty-lands*, and the first purchasers had no right to city lots, from the first location thereof, but only from the proprietor's grant, *after his arrival here*.

Upon the second coming of William Penn, after governor Fletcher's time, viz. in the year 1701. The assembly, in an address to the proprietor, claimed certain privileges in the city, which they alleged, had been violated. The seventh and eighth articles are as follow,

"8th. That whereas the proprietary *formerly* gave the purchasers an expectation of a certain tract of land, which is since laid out, about two miles long, and one mile broad, whereon to build the town of *Philadelphia*, and that the same should be a *free gift*; which since has been clogged with divers rents, and reservations, contrary to the first design and grant, and to the great dissatisfaction of the inhabitants. We desire the governor to take it into consideration, and make them easy therein."

"9th. That the land lying back of that part of the town already built, remain for common, and that no leases be granted for the future to make inclo-

tures to the damage of the public, until such time as the respective owners shall be ready to build or improve thereon." Votes of assembly, vol. 1, part 1, page 145.

The proprietor, in his answer, ten days afterwards, says "you are under a mistake in fact; I have tied you to nothing in the allotment of the city, which the *first purchasers, then present*, did not readily seem to comply with, and I am sorry to find their names to such an address as that presented to you, who have got double lots by my *re-applotment* of the city, from fifty to one hundred and two feet front lots; and if they are willing to refund the fifty-two feet, I shall as you desire, be easy in the quit rents; although this matter *solely refers to the first purchasers*, and to me as proprietor."

"You are under a misapprehension, to think, that a fourth part of the land laid out for a city, belongs to any body but myself, it being reserved for such as *were not first purchasers*, who might want to build in future time; and when I reflect on the great abuse done me in my absence, by destroying of my timber and wood, and how the land is overrun with brush, to the injury and discredit of the town, it is small encouragement to grant your request; however, I am content that some land be laid out for the accommodation of the town, till inhabitants present to settle it, under regulations that shall be thought most conducing to the end desired; about which I shall consult with those persons chiefly concerned therein. Ibid 148

The assembly in their reply, tell the proprietor, that they had tenderly weighed and debated these two heads, and voted that they be still insisted upon; and further application to be made to the proprietor, humbly requesting him to ease the party concerned therein, *ibid.* 153. But nothing further appears respecting this controversy.

That the original concessions and conditions, made in England, related merely to the *first purchasers*, is evident from a variety of entries in the books of the commissioners of property, corroborated by general opinion, and uniform construction. See book G, page 73. "I. F. being none of the *first 100 purchasers*, had no right to liberty lands, according to the concessions," so in Book H, page 38.

The point has however undergone judicial investigation and decision, that the concessions are confined to the first purchasers, 2 Binney, 476, and in the case of Springersbury Manor, in York county; judge Washington decided that the ninth section, which runs thus, "In

every 100,000 acres, the governor and proprietary by lot reserveth ten to himself, which shall lie but in one place," was confined to the cases of the first purchasers. *Cited, ib* 486.

This subject has become more matter of curiosity than utility. Yet it is necessary to observe, that under the commonwealth, the state paid great regard to those ancient claims of original purchasers to city lots; and provided a mode to ascertain those claims, and to grant patents for the lots, or an indemnification for them, in case they had been sold or appropriated; but limited the time in which such claims should be made, which is now expired, and the remaining lots appropriated by the state, for which see vol. 1, (chap. 931.) page 553, and the note thereto subjoined.—

Before we proceed to consider the mode of granting and settling lands in Pennsylvania, it will be useful to ascertain the Indian purchases, and to give a comprehensive and connected view of the deeds, and boundaries, as far as they can be ascertained. The Dutch and Swedes, as has been already observed, were peaceably settled on the Delaware, and after their subjection by the English, were under the government of New-York, and had acquired rights under that government. And several instances occur in the minute books, in which the commissioners of property confirmed by patent lands derived from grants and promises from *Sir Edmund Andross*, the governor of New-York.

One of the first acts of William Penn, was to naturalize all the settlers who had seated themselves previous to, and had remained after his arrival, and it appears to have been his earnest desire to extinguish every kind of title, or claim to the lands necessary for the accommodation of his colony, and to live on terms of friendship with the Indian natives.

The early Indian deeds are vague, and undefined as to their boundaries, and the stations cannot be precisely ascertained at this day; but these circumstances have long ceased to be of any importance; and the deed of September 17th, 1718, seems to define pretty clearly, the extent and limits of the lands acquired by the several purchases, to that period.

We shall begin with the deed of July 15th, 1682, procured at a treaty held with the Indians, by William Markham, the deputy governor, a short time previous to the first arrival of William Penn, from *Idquahon*, *Iannottowe*, *Idquoqueywon*, *Sahoppè*, for himself and *Okonichon*, *Merkekowon*, *Oreckton*, for

1784. *Nannamusey, Shawwacighon, Swanpisse, Nahoosey, Tomackhickon, Weskekitt and Talawasis*, Indian Shackamakers, for the following lands, for themselves and their people. "Beginning at a certain White Oak, in the land now in the tenure of John Wood, and by him called the Gray-stones, over against the fall of Delaware river, and so from thence up the said river side to a corner marked Spruce-tree, with the letter P, standing by the Indian path that leads to an Indian town called Playwisky, and near the head of a creek called Towissinson, and from thence westward to the creek called Neshammonys creek, and along by the said Neshammonys creek, unto the river Delaware, *alias*, Makerisk-kitten; and so bounded by the said river to the said first mentioned White-Oak, in John Wood's land, and all those islands called or known by the several names of Matiniousk island, Sapassimeks island, and Oreskons island, lying or being in the said river Delaware, &c.

By an indorsement on this deed, dated August 1st, 1682, sundry Indian chiefs, not present at the execution of the deed in July, and who style themselves the right owners of the land called Sapassimeks, and the island of same name, ratify and approve it; signed, *Idquoqueywon, Swanpisse, Filerap-pomond, Essexamarthake, Nanneshessham, Pyserhay*. (Note. In a duplicate of this deed, the river Delaware is called Makerisk-kiskon.) These deeds are not recorded. This purchase was of inconsiderable extent.

The deed of June 23d, 1683, is in these words, "We *Essepenaike, Swanpees, Oketarickon, and Wessapoak*, for us, our heirs and assigns, do dispose of all our lands lying betwixt Pemmapecka and Neshemineh creeks, and all along upon Neshemineh creek, and backward of the same, and to run two days journey with an horse up into the country, as the said river doth go, to William Penn, proprietor and governor of the province of Pennsylvania, &c. his heirs and assigns forever, for the consideration of so much wampum, and so many guns, shoes, stockings, looking-glasses, blankets, and other goods, as he the said William Penn, hath pleased to give unto us, hereby for us, our heirs and assigns, renouncing all claims or demands of any thing in or for the premises for the future, from him, his heirs or assigns."

By another deed, of the same date, *Tanonon and Metamequan*, release to William Penn, the same territory, omitting the *two days journey*.

The extent of this purchase would

be considerable, and greatly beyond the limits of the subsequent deed of September, 1718. Neither of these deeds is recorded.

June 25th, 1683. An Indian called *Wingebone*, conveys in the following terms, viz. "For me, my heirs and assigns, do freely grant and dispose of all my lands lying on the west side of the Schuylkill river, beginning from the first falls of the same all along upon the said river, and backward of the same; so far as my right goeth, to William Penn, &c. for so much wampum and other things, as he shall please to give us, &c.

July 14th, 1683. *Secane and Iquoqushan*, Indian Shackamakers and right owners of the lands lying between Manaiunk, *alias* Schuylkill, and Macopanackhan, *alias* Chester river, grant and sell all their right and title in the said lands, lying between the said rivers, beginning on the west side of Manaiunk, [] called Consohocken, [here an obliteration,] and from thence by a westerly line to the said river Macopanackhan.

And, on the same day, *Nenesheickan, Malebore alias Pendanoughhah, Neshanocke*, [and *Oserereon*, but not signed by him,] Shackamakers and right owners of all the lands lying between Manaiunk, *alias* Schuylkill, and Pemmapecka creeks, grant all their right, title and interest in their lands betwixt Manaiunk and Pemmapeckha, so far as the hill called Consohocken on the said river Manaiunk, and from thence by a northwest line to the river of Pemmapecka. None of these deeds are recorded.

What was the true situation of the Consohocken hill, cannot perhaps, be now ascertained. That it could not be very high up the Schuylkill is apparent; otherwise a northwest line from it, as mentioned in the deed last recited, would never strike Pennepack creek; nor would the line mentioned in the deed of July, 1685, hereafter cited, touch the Chester and Pennepack creeks.

Though the name is now lost, it is most probable that it referred to some of the highlands between Wissahickon and Norristown.

September 10th, 1683. Grant from *Kebetappan of Opasiskunk*, for his half of all his land betwixt Susquehanna and Delaware, which lieth on the Susquehanna side, with a promise to sell at the next spring, on his return from hunting, his right to the other half of said lands. (This deed is not recorded.)

October 18th, 1683. *Machaloha*, calling himself owner of the lands from Delaware river to Chesapeak bay, and up to the falls of the Susquehanna,

conveys his right to William Penn, to said lands, to enjoy them, live upon and quietly. (This deed is signed in the presence of many Indians, whose names are partly eaten off by mice, as is also a small part of the deed, where the blank is.—It is not recorded.)

June 3d, 1684. Deed from *Manghousin*, for all his land upon *Pulkehoma*, (*Perkeomink*, now *Perkioming*. This deed is not recorded.)

June 7th, 1684. *Richard Mettami-cont*, calling himself owner of the land on both sides of *Pemmapecka* creek, on the river Delaware, releases to William Penn.—Not recorded.

July 30th 1685. Deed from *Shakhophoh*, *Secanè*, *Malibore*, *Tangoras*, Indian shackamakers, and right owners of the lands lying between *Macopanackan*, alias *Upland*, now called *Chester creek*, and the river or creek called *Pemmapecka*, now called *Dublin creek*, (*Pennypack*), for all the land, beginning at the hill called *Conshohockin* on the river *Manaiunk*, alias *Schuylkill*, from thence extending a parallel line to the said *Macopanackan*, by a south-westerly course, and from the said *Conshohockin* hill to the aforesaid *Pemmapecka*, by the said parallel line northeasterly, and so up along the said *Pemmapecka* creek, as far as the creek extends, and so from thence northwesterly, back into the woods, to make up two full days journey, as far as a man can go in two days from the said station of the parallel line, at *Pemmapecka*; as also beginning at the said parallel at *Macopanackan*, and so from thence up said creek as far as it extends, and from thence northwesterly back into the woods to make up two full days journey as far as a man can go in two days from the said station of the said parallel line at the said *Macopanackan*. (This deed is not recorded.)

October 2d, 1685. Deed from *Pave*, *Packenah*, *Tareekham*, *Sichais*, *Pitquassit*, *Towis*, *Essepenaick*, *Peshay*, *Kekelappan*, *Eomus*, *Machaloha*, *Meshecongus*, *Wissapowey*, Indian kings, shackamakers, right owners of all the lands from *Quing* *Quingus*, called *Duck creek*, unto *Upland*, called *Chester creek*, all along by the west side of Delaware river, and so between the said creeks, backwards as far as a man could ride in two days with a horse, which they convey to William Penn. Recorded at Philadelphia, in book F. vol. 8, page 121.

In this place should call a deed alleged to have existed, dated August 20th, 1686, for the walking purchase, and which occasioned much controversy, and dissatisfaction among the Indians; it is, however, referred to, in-

cluded in, and confirmed by the deed of August, 1737. It is certain no such original deed was in existence at the treaty of Easton, in 1757. It will be further noticed in the proper place.

June 15th, 1692. King *Taminent*, king *Tangorus*, king *Swampes*, and king *Hickoqueen*, by deed, acknowledge satisfaction for all that tract of land belonging to *Taminent* and others, "which they parted with unto William Penn, &c. the said tract lying between *Neshamina* and *Poquessing*, upon the river Delaware, and extending backwards to the utmost bounds of the province." This deed is not recorded.

These limits on the Delaware, are precisely defined. The *Poquessing*, a name still retained, (as is *Neshaminy*), is the original boundary between the counties of Philadelphia and Bucks, as ascertained in April, 1685: And tradition informs us, that near the lower side of the *Poquessing*, on the Delaware, on an elevated piece of ground, the city of Philadelphia was first intended to be built.

January 13th, 1796. Thomas Dongan, afterwards earl of Limerick, in the kingdom of Ireland, late governor of New York, by deed, conveys to William Penn, all that tract of land lying on both sides of the river *Susquehanna*, and the lakes adjacent, in or near the province of Pennsylvania, in consideration of one hundred pounds sterling,—Beginning at the mountains, or head of the said river, and running as far as, and into the bay of *Chesapeak*, which the said Thomas lately purchased of, or had given him by the *Susquehanna* Indians, with warranty from the *Susquehanna* Indians.

The Indian deed to Col. Dongan is not known now to exist, nor is there any trace of it in the public offices. It is known, however, that he was the agent of William Penn to make the purchase.

This deed was confirmed in 1700.—Yet we find the *Conestogoe* Indians complaining of it, at the treaty with Sir William Keith, in 1722, and alleging that William Penn, forty years before, got some person at New-York, to purchase the lands on *Susquehanna* from the Five Nations who pretended a right to them, having conquered the people formerly settled there; and when the *Conestogoes* understood it, they were sorry; and that William Penn took the parchment, and laid it upon the ground, saying to them, it should be common amongst them, viz. The English and the Indians, &c. The governor answered, "I am very glad to find that you remember so perfectly the wise and kind expressions of the great and good

1784. William Penn towards you; and I know that the purchase which he made of the lands on both sides of Susquehanna, is exactly true as you tell it, only I have heard further, that when he was so good to tell your people, that notwithstanding that purchase, the lands should still be in common between his people and them, you answered, that a very little land would serve you, and thereupon you fully confirmed his right, by your own consent and good will, &c."

The curious inquirer who wishes to be further informed of these transactions, now very unimportant, may consult the treaties of 1722 and 1727, in the council books.

July 5th, 1697. The deed from the great Sachem *Tamim*, his brother and sons, is in these words,—“We *Taminy Sathimack* and *Wecheeland*, my brother, and *Wehequeekhon*, *alias Andrew*, who is to be king after my death, *Yaqueekhon*, *alias Nicholas*, and *Oyenamockquit*, *alias Charles*, my sons, for us, our heirs and successors, grant, &c. all the lands, woods, meadows, rivers, rivulets, mines, minerals and royalties whatsoever, situate, lying and being between the creek called *Pemmopeck*, and the creek called *Neshaminy*, extending in length from the river Delaware, so far as a horse can travel in two summer days, and to carry its breadth according as the several courses of the said two creeks will admit, and when the said creeks do so branch, that the main branches, or bodies thereof cannot be discovered, then the tract of land hereby granted, shall stretch forth upon a direct course, on each side, and so carry on the full breadth, to the extent of the length thereof.

Acknowledged in open court, at Philadelphia, 6th July, 1697. Recorded in the Rolls-Office, 7th of the 12th month, 1698, in book E 3, vol. 5, page 57, &c.

September 15th, 1700. *Widagh* and *Andaggy-junkquagh*, kings or sachemas of the Susquehanna Indians, and of the river under that name, and lands lying on both sides thereof. Deed to W. Penn for all the said river Susquehannagh, and all the islands therein, and all the lands situate, lying and being upon both sides of the said river, and *next adjoining to the same*, to the utmost confines of the lands which are, or formerly were, the right of the people or nation called the Susquehannagh Indians, or by what name ever they were called, as fully and amply as we or any of our ancestors, have, could, might or ought to have had, held or enjoyed, and also confirm the bargain and sale of the said lands, made unto *Col. Thomas Dongan*, now earl of Linrick, and formerly go-

vernor of New York, whose deed of sale to said governor Penn we have seen. Recorded in Book F, vol. 8, page 242.

The above is the deed referred to by Sir William Keith, at the treaty with the Cones agoes, in 1722. It is remarkable, that the Indian deed to Col. Dongan was not produced, and it seemed to have been conceded, that his purchase was from the Five Nations, who pretended right to the lands by conquest; and the words in italics appear to have been intended to embrace and confirm the title however derived. Nor did the purchase include any extent of land. It is true it is left indefinite; being for land on both sides of the river, and next adjoining to the same; but the great object of William Penn was to secure the river through the whole extent of the province; and although it was not designed for immediate settlement, the great foresight of the proprietor would not permit him to relinquish this important grant, which was to secure the whole of the Susquehanna, from the pretensions of the adjoining colonies, and at this time the charter bounds were not distinctly known, but, for a long time afterwards they were considered as extending at least to the *Owagey*, and including a considerable part of the river, now, unquestionably, known to be within the limits of New-York. No opportunity was therefore lost to bring this title to the view of the Indians. Accordingly, in articles of agreement between William Penn, and the Susquehanna, Shawona, Potowmack and Conestogoe Indians, dated April 23d, 1701. (Recorded in Book F, vol. 8, page 43.) Among other things they ratify and confirm governor Dongan's deed of January 1796, and the above deed of the Susquehanna Indians, of September, 1700.

And notwithstanding the limits defined in the deed of September 1718, which will shortly follow, we find Dongan's deed insisted on, and acquiesced in, at Susquehanna, in 1722; and, again, at a treaty held at Philadelphia, in July 1727, between governor Gordon, and the deputies of the Five Nations; in answer to the deputies, who said the governor had divers times sent for them and they had therefore come to know his pleasure, and made an offer to sell lands; the governor tells them, “that he is glad to see them, that he takes their visit very kindly at this time, but that they were misinformed when they supposed the governor had sent for them; that governor Penn had, by means of *Col. Dongan*, already bought of the Five Nations, the lands on Susquehanna; that the chiefs of the Five Nations, when

Sir William Keith was at Albany, had of themselves confirmed the former grant, and absolutely released all pretensions to these lands." The release here stated to have been made at Albany, in 1722, is however, not to be now found.

About this period the Indian purchases become more important, and the boundaries more certain and defined, and principles were established, and acquired the force of settled law, of deep interest to landholders; and which have been since uniformly recognized, and at this moment govern and control our judicial tribunals.—To live in peace and friendship with the natives, was a part of the benevolent system of the venerable and virtuous founder of Pennsylvania. To a people averse from warfare, from conscientious motives, every thing which would tend to provoke their warlike neighbours, and irritate them to lift the tomahawk, was most carefully to be avoided; and we find no common attention bestowed upon this momentous subject by the government. When the natives sold their lands, it was understood distinctly, that the white people should not settle or encroach upon their hunting grounds, and lands reserved by them; nor was a single attempt thus to settle, unattended by complaints and uneasiness. The Indians observed their treaties with fidelity, and the boundaries appear to have been always accurately understood by them.

On the 17th of September, 1718, there is a deed of release from sundry Delaware Indian chiefs, viz. *Sassoonah, Meetashechay, Ghatt, peneman, Potchais, Ayunackan, Opekasset, and Pepawm-mam*, for all the lands situate between the two rivers, Delaware and Susquehanna, from Duck-creek, to the mountains on this side *Lechay*, with an acknowledgment, that they had seen and heard *divers deeds of sale* read unto them, under the hands and seals of former kings and chiefs of the Delaware Indians, their ancestors and predecessors, who were owners of said lands, by which they had granted the said lands to William Penn, for which they were satisfied and content, which, for a further consideration of goods delivered them, they then confirmed.—This deed is recorded, May 13th, 1728, in Book A. vol. 6, page 59.

It is therefore to be observed, that the undefined limits of all the preceding deeds, westward, *two days journey* with a horse, &c. which would have extended far beyond the Lehigh hills, are here restricted to those hills, which so far as related to the purchases from the Delawares, were the boundaries of the purchased lands.

The settlers, notwithstanding, encroached on the Indian lands beyond this boundary, which occasioned great anxiety and uneasiness among the Delawares. The complaints of the aged *Sassoonan*, were eloquent and pathetic. Violence had ensued, and blood had flowed. Preparations had been made, and alliances were forming for war; but by prudence and skill, the danger was turned aside.

At the treaty at Philadelphia, in 1728, *Sassoonan*, addressing himself to Mr. James Logan, the proprietary secretary, and principal commissioner for land affairs, said "That he was grown old, and was troubled to see the christians settle on lands that the *Indians* had never been paid for; they had settled on his lands, for which he had never received any thing; that he was now an old man, and must soon die; that his children may wonder to see all their father's lands gone from them without his receiving any thing for them; that the christians made their settlements very near them, and they would have no place of their own left to live on; that this might occasion a difference between their children hereafter, and he would willingly prevent any misunderstanding that might happen."

Mr. Logan, with the leave of the governor, answered, "That he was no otherwise concerned in the lands of the province, than as he was entrusted with other commissioners, by the proprietor, to manage his affairs of property in his absence; that William Penn had made it a rule, never to suffer any lands to be settled by his people, till they were first purchased of the *Indians*; that his commissioners had followed the same rule, and how little reason there was for any complaint against him or the commissioners, he would make appear. He then proceeded to relate to them the circumstances connected with the release of 1718, for the lands from *Duck Creek*, to near the forks of Delaware, and that the *Indians* were then entirely satisfied with it; and the instrument of release was then read to them.

Sassoonan and *Opekasset*, both acknowledged this deed to be true, and that they had been paid for all the lands therein mentioned; but *Sassoonan* said, the lands beyond these bounds had never been paid for; that these reached no farther than a few miles beyond *O'ee*; but that their lands on *Tulpyhockin*, were seated by the christians.

Mr. Logan answered, that he understood, at the time that deed was drawn, and ever since, that the *Lechay* hills or mountains, stretched away from a little below *Lechay*, or the forks of Delaware,

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to those hills on Susquehanna, that lie about ten miles above *Pexton*; Mr. Farmer said those hills passed from *Lechay*, a few miles above *Oley*, and reached no further, and that *Tulpyhockin* lands lay beyond them.

Whether, continued Mr. Logan, those lands of *Tulpyhockin* were within or without the bounds mentioned in the deed, he well knew that the Indians some few years since, were seated on them, and that he, with the other commissioners, would never consent that any settlement should be made on lands where the Indians were seated; that these lands were settled wholly against their minds, and even without their knowledge; but he desired of the Indians, that though these people had seated themselves on the *Tulpyhockin* lands without the commissioners' leave or consent, yet that they would not offer them any violence, or injure them, but wait till such time as that the matter could be adjusted."

In this the Indians acquiesced, and having waited some time without receiving any satisfaction for their land, and the encroachments still increasing, they renewed their complaints. The French at Montreal were likewise endeavouring to gain them over to their interest, and it was seen both by the assembly and governor, that it was but just and reasonable, and that it concerned the peace of the country, that the Indians should be made easy respecting their lands, and their complaints removed. This state of affairs gave rise to the treaty of 1732, shortly after the arrival of Thomas Penn, who was present at it. See votes of assembly, vol. 3, page 158.

Previous, however to this treaty, there appears to have been a release, but not recorded, from sundry Indians, for all the land on both sides of the Brandywine Creek, from the mouth thereof, where it enters the river Delaware, up to a certain rock in the said creek, near the upper line of Abraham Marshal's land. It is unimportant to inquire at what point this purchase ended. It could have been intended merely to extinguish some claims, probably not well founded; and the same land was included in the release of 1718. This release is dated, May 31st, 1726.

September 7th, 1732, *Sassoonan*, alias *Allumnapis*, sachem of the Schuylkill Indians, *Elalapis*, *Ohopamen*, *Pesquetomen*, *Mayemoe*, *Partridge*, *Tepakoset*, alias *Joe*, grant all those tracts of land or lands, lying on or near the river Schuylkill, or any of the branches, streams, fountains or springs thereof, eastward or westward, and all the lands

lying in or near any swamps, marshes, fens or meadows, the waters or streams of which flow into, or towards the river Schuylkill, situate, lying and being between those hills, called *Lechay* hills, and those called *Kekachtanemin* hills, which cross the said river Schuylkill, about thirty miles above the said *Lechay* hills, and all land whatsoever lying within the said bounds, and between the branches of Delaware river on the eastern side of the said land, and the branches or streams running into the river Susquehanna on the western side of the said land. That is to say, all those lands situate, lying and being on the said river Schuylkill, and the branches thereof, between the mountains called *Lechay* to the south, and the hills or mountains called *Kekachtanemin* on the north, and between the branches of the Delaware river on the east, and the waters falling into the Susquehanna river on the west.

Ratified by *Lingahonoa*, a Schuylkill Indian, who was not present at signing the foregoing deed, 12th July, 1742.

Confirmed by deed of release, 20th of August, 1733, which is in fact a release for the consideration of said lands, received by them. This release is also confirmed by *Lingahonoa*, 12th July, 1742, acknowledging that he had received his portion of the consideration.

These deeds and releases have never been recorded.

The lands at *Tulpehocken* were quieted by this deed; but as it embraced none of the lands on the Delaware, or branches leading into it, the discontent of the Indians still continued with regard to the settlements at the *Minissinks*, near forty miles above the *Lechay* hills, which was the northern boundary, according to the deed of 1718. Although considerable obscurity rests upon the deed of 1686, yet presuming its existence, the purchase had never been *walked out*. And if any reliance can be placed in the authenticity of a letter from James Logan, dated 20th November, 1727, and printed at *London* in the year 1739, and said to have been compared with the original then in being, any claim under the deed of 1686, would appear to have been abandoned. The letter is in these words, "Friend Thomas Watson, this morning I wrote to thee by *Joe Taylor*, concerning warrants that may be offered thee to be laid out on the *Minissink* lands, and was then of opinion, that the bearer hereof, *Joseph Wheeler*, proposed to lay his there. Having since seen him, he tells me he has no such thought, but would have it laid three or four miles above *Durham*, on a spot of pret-

ty good land there amongst the hills, and I think, at some distance from the river, proposing, as he says, to live there himself with his kinsman, who was here with him; pray take the first opportunity to mention it to *I. Langhorne*, for if he has no considerable objection to it, (that is, if he has laid no right on it,) I cannot see that we should make any other than that it is not purchased of the Indians, which is so material an one, that without their previous engagement to part with it very reasonably, it cannot be surveyed there. But of this, they themselves, I mean *Jos. Wheeler*, &c. propose to take care. This is what offers on this head, from thy loving friend, *James Logan*." The forks of Delaware were notwithstanding, settled; and to this, among other causes, was attributed by the writers of the day, the alienation of the Delawares and the Shawanese, from the British interests.

After several ineffectual attempts to compose the clamours of the Delawares, it is said the proprietor complained of them to the Five Nations. In 1736, the deputies of the Five Nations arrived, and a treaty was held with them, at which *Conrad Weiser* was an important agent. The deed of 1736, is as follows:—

October 11th, 1736. Whereas the late proprietary of the province of Pennsylvania, William Penn, Esq. soon after his first arrival in the said province, took measures to have the river Susquehanna, with all the lands lying on both sides of the same, purchased for him and his heirs, of those Indians of the Five Nations inhabiting in the province of New-York, who claimed the property thereof, and accordingly did purchase them of Col. *Thomas Dungan*, formerly governor of New-York, and pay for the same; notwithstanding which, the Indians of the Five Nations aforesaid, have continued to claim a right in and to the said river and lands, nor have those claims been hitherto adjusted; whereupon the said sachems or chiefs, having, with all the others of the said nations, met the last summer at their great council, held in the country of the said Onondagoes, did resolve and conclude that a final period and conclusion should be put to all disputes that might possibly arise on that occasion, and having appointed the aforementioned sachems or chiefs, as plenipotentiaries of all those nations to repair to Philadelphia, in order to confirm the several treaties of peace which have hitherto been concluded between them, and the said province, and also to settle and adjust all demands and claims

that have been heretofore made, or hereafter may be made, touching or concerning the aforesaid river Susquehanna, and the lands lying on both sides thereof; and the said sachems or chiefs of the Five Nations aforesaid, having for themselves, and on behalf of the said nations, renewed and ratified the treaties of friendship and peace subsisting between them and the said province, did afterwards proceed to treat and agree with the honourable the proprietaries thereof, about the said river and lands. Now know ye, &c.—— grant, &c. to John Penn, Thomas Penn, and Richard Penn, their heirs, successors and assigns, all the said river Susquehanna, with the lands lying on both sides thereof, to extend eastward as far as the heads of the branches or springs which run into the said Susquehanna, and all the lands lying on the west side of the said river, to the setting of the sun, and to extend from the mouth of the said river, northward, up the same to the hills or mountains called in the language of the said nations *Tayamentasachtu*, and by the Delaware Indians, the *Kekachtanamin* hills. Signed by 23 Indian chiefs of the *Onondago*, *Seneca*, *Oneida* and *Tuscarora* nations, recorded in Book C, vol. 1, page 277, May 7th, 1741

What is remarkable at this period, is, that the Indian chiefs on their return, staid several days with *Conrad Weiser*, at *Tulpehocken*, and there executed the following deed, dated October 25th, 1736, which is proved and recorded in Book C, vol. 2, page 350, May 22d, 1741.

We the chiefs of the Six Nations of Indians, the *Onondagoes*, *Isanundowans* or *Semekas*, *Cayogoes*, *Oneydas*, *Tuscaroroos*, (in behalf also of the *Canyingoes*, or *Mohacks*,) who have lately, at Philadelphia, by our deed in writing, dated the 11th day of this instant, October, released to John Penn, Thomas Penn, and Richard Penn, proprietors of Pennsylvania, and to their heirs and successors, all our right, claim and pretensions, to all the lands on both sides of the river Susquehanna, from the mouth thereof as far northward, or up the said river as that ridge of hills called the *Tyoninhasachtu*, or endless mountains, westward to the setting of the sun, and eastward to the farthest springs of the waters running into the said river, do hereby further declare, that our true intent and meaning by the said writing, was and is to release, and we do hereby more expressly release to the said proprietors, &c. all the lands lying within the bounds and limits of the government of Pennsylvania, beginning

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eastward on the river Delaware, as far northward as the said ridge, or chain of endless mountains, as they cross the country of Pennsylvania, from the eastward to the west; and they further engage, never to sell any of their lands to any but the proprietors, or children of William Penn.

There is an indorsement of ratification on this deed, dated 9th of July, 1754, signed by nine Indians.

But notwithstanding this latter deed, it was earnestly contended by those who were unfriendly to the proprietary proceedings, and probably from an apprehension, or foresight of the disasters which ensued, that the right of the Five Nations lay only on the waters which run into the Susquehanna; and as they claimed no lands on the Delaware, they could by that instrument convey none. However this fact may have been, we find, about eight months afterwards, the proprietors procured a release from the Delawares, for at least part of these lands, or a confirmation of the supposed deed of 1686, or the walking purchase. This singular release is in the following words.

August 25th, 1737. We *Teshakomen*, alias *Tisneckuk*, and *Nootamis* alias *Natumus* two of the sachemas, or chiefs of the Delaware Indians, having almost three years ago, at Durham, begun a treaty with our honourable brethren John and Thomas Penn, and from thence another meeting was appointed to be at Pensbury the next Spring following, to which we repaired, with *Lappawinzoë*, and several others of the Delaware Indians, at which treaty several deeds were produced, and shewed to us by our said brethren, concerning several tracts of land, which our forefathers had more than fifty years ago, bargained and sold unto our good friend and brother William Penn, the father of the said John and Thomas Penn, and in particular one deed from *Maykeerickisho*, *Sayhappy* and *Toughlaughsee*, the chiefs or kings of the northern Indians on Delaware, who for, &c. did grant, &c. all those lands King and being in the province of Pennsylvania, beginning upon a line formerly laid out from a corner spruce tree by the river Delaware, (*Ma-keerickicon*), and from thence running along the ledge or foot of the mountains, west-north-west to a corner white oak, marked with the letter P, standing by the Indian path that leadeth to an Indian town called *Playwickey*, and from thence extending westward to *Neshamony* creek, from which said line, the said tract or tracts thereby granted doth extend itself back into the woods, as far as a man can go in one day and an

half, and bounded on the westerly side with the creek called *Neshamony*, or the most westerly branch thereof, and from thence by a line

to the utmost extent of the said one day and an half's journey, and from thence

to the aforesaid river Delaware, and from thence down the several courses of the said river to the first mentioned spruce tree, &c.—

But some of our old men being absent, we requested more time to consult with our people, which request being granted, we have, after more than two years, from the treaty at Pensbury, now come to Philadelphia, together with our chief sachema *Monock Kishan*, and several of our old men. They then acknowledge that they were satisfied that the above described tract was granted by the persons above mentioned, and agree to release to the proprietors all right to that tract, and desire it may be walked, travelled, or gone over by persons appointed for that purpose. (Signed) *Manockishichon*, *Lappawinzoë*, *Teshacomien*, *Nootamis*—And witnessed by twelve other Indians, in token of full and free consent, besides other witnesses. Recorded Mar 8th, 1741, in book G, vol. 1, page 282.

The walk was accordingly made; but it tended only to increase the dissatisfaction of the Indians.—In giving this summary of the causes and effects of the Indian treaties, it is not designed, nor is it calculated, to encroach on the province of history, which embraces a broader ground; but merely to connect them together and shew how intimately they depend on each other. Nor will it escape the observation of the reader, how materially the frequent recurrence to, and confirmation of, Col. Deagan's deed, bears upon the deed of the 11th of July, 1754, from the Indians to Connecticut claimants, whether that deed were real or fictitious.

This walk extended, it is said, about thirty miles beyond the Lehigh hills, over the Kittatinny mountain; and a draught of it was made by Surveyor-General *Eastburn*, including the best of the lands in the forks of Delaware, and the Minisinks. The walkers were expert, and the Indians who could not keep up with them, complained that they ran; and moreover it would appear that their expectation was that the walk was to be made up the river, by its courses. It is not intended to enter further into the controversy than to exhibit the general grounds which are said to have estranged the Delawares from our interest, and drove them into that of the French, who were always ready, in those times, to increase their dissatisfaction

with the English. *Nutimus* and others, who signed the release of 1737, were not willing to quit the lands, nor give quiet possession to the people who came to take up lands and settle in the forks. They remonstrated freely, and declared their resolution of maintaining possession by force of arms. In the year 1741, therefore, a message was sent to the Six Nations, who, it was well known, had great authority over the Delawares, to press them to come down and force the Delawares to quit the forks. They accordingly came in the summer of 1742, to the number of two hundred and thirty. Governor *Thomas*, in his message to the assembly of the 24th of July, in that year, among other things, tells them, "That their coming down was not only necessary for the present peace of the province, in regard to some *Indians* who had threatened to maintain by force their possession of lands which had been long ago purchased of them, and since conveyed by the proprietaries to some of our own inhabitants: but for its future security, likewise, in case of a rupture with the French, who will leave no methods unessayed to corrupt their fidelity, and to persuade them to turn their arms against us. Votes of assembly, vol. 3, page 481-2.

At this treaty, at Philadelphia, the governor informed the deputies of the conduct of their cousins, a branch of the Delawares, who gave the province some disturbance about the lands the proprietors purchased of them, and for which their ancestors had received a valuable consideration above fifty-five years ago, (alluding to the deed of 1686, confirmed by the deed of 1737).—That they continued their former disturbances, and had the insolence to write letters to some of the magistrates of this government, wherein they had abused the worthy proprietaries, and treated them with the utmost rudeness and ill manners; that being loth, out of regard to the Six Nations, to punish the Delawares as they deserved, he had sent two messages to inform them the Six Nation deputies were expected here, and should be acquainted with their behaviour. That as the Six Nations, on all occasions, apply to this government to remove all white people that are settled on lands before they are purchased from them, and as the government use their endeavours to turn such people off, so now he expects from them that they will cause these *Indians* to remove from the lands in the forks of *Delaware*, and not give any further disturbance to the persons who are now in possession.

The deeds and letters were then read, and the draught exhibited.

Canassatego, in the name of the deputies, told the governor, "That they saw the Delawares had been an unruly people, and were altogether in the wrong; that they had concluded to remove them, and oblige them to go over the river *Delaware*, and quit all claim to any lands on this side for the future, since they had received pay for them, and it is gone through their guts long ago."—Then addressing himself to the *Delawares*, in a violent and singular strain of invective, he said, "They deserved to be taken by the hair of the head, and shaken severely, till they recovered their senses, and became sober; that he had seen with his eyes a deed signed by nine of their ancestors above fifty years ago for this very land, (1686,) and a release signed not many years since, (1737,) by some of themselves, and chiefs, yet living, (*Sassoonan* and *Nutimus* were present,) to the number of fifteen and upwards; "but how come you, continued he to the *Delawares*, to take upon you to sell lands at all? We conquered you; we made women of you; you know you are women, and can no more sell land than women; nor is it fit you should have the power of selling lands, since you would abuse it. This land that you claim is gone through your guts; you have been furnished with clothes, meat, and drink, by the goods paid you for it, and now you want it again like children as you are. But what makes you sell lands in the dark? Did you ever tell us that you had sold this land? Did we ever receive any part, even the value of a pipe shank, from you for it? You have told us a blind story, that you sent a messenger to us, to inform us of the sale, but he never came amongst us, nor we ever heard any thing about it. This is acting in the dark, and very different from the conduct our Six Nations observe in the sales of land. On such occasions they give public notice, and invite all the Indians of their united nations, and give them all a share of the present they receive for their lands. This is the behaviour of the wise united nations. But we find you are none of our blood; you act a dishonest part not only in this, but in other matters; your ears are ever open to slanderous reports about your brethren. For all these reasons we charge you to remove instantly; we don't give you liberty to think about it. You are women. Take the advice of a wise man, and remove instantly. You may return to the other side of *Delaware* where you came from; but we do not know whether, considering how you have demeaned yourselves, you will be permitted to

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live there, or whether you have not swallowed that land down your throats, as well as the land on this side. We therefore assign you two places to go to, either to *Wyomen* or *Shamokin*. You may go to either of these places, and then we shall have you more under our eye, and shall see how you behave. *Don't deliberate, but remove away, and take this belt of wampum*" He then forbid them ever to intermeddle in land affairs, or ever hereafter pretend to scill any land, and commanded them, as he had something to transact with the *English*, immediately to depart the council.

The *Delawares* dared not disobey this peremptory command. They immediately left the council, and soon after removed from the forks; some, it is said, went to *Wyoming* and *Shamokin*, and some to the *Ohio*. Thus strangely was terminated the purchase of 1686—admitting the deed to have once existed. But even at this treaty with the Six Nations, it was not admitted that the proprietary right extended *beyond the Kittochinny hills*; and the deputies complained, that they were not well used with respect to the land still unsold by them. "Your people, (they said,) daily settle on these lands, and spoil our hunting. We must insist on your removing them, as you know they have no right to settle to the northward of the *Kittochinny hills*. In particular we renew our complaints against some people who are settled on *Juniata*, a branch of *Susquehanna*, and all along the banks of that river as far as *Mahaniay*, and desire they may forthwith be made to go off the land, for they do great damage to our cousins the *Delawares*."

With respect to the people settled at *Juniata*, the Governor replied, "that some magistrates were sent expressly to remove them, and he thought no persons would presume to stay after that." Here they interrupted the Governor, and said, "These persons who were sent do not do their duty; so far from removing the people, they made surveys for themselves, and they are in league with the trespassers; we desire more effectual methods may be used, and honest men employed," which the Governor promised should be done. But we shall have occasion again to recur to this point. It is necessary only to add, at this time, the strong expressions of the speaker to the Governor—"We have given the river *Juniata* for a hunting place to our cousins, the *Delaware Indians*, and our brethren the *Shawnese*, and we ourselves hunt there sometimes. We therefore desire you will immediately by force remove all those that live on

the river *Juniata*." And what less could be demanded after the expulsion of the *Delawares* from the Forks?

Soon after this it appeared that the *Shawnese* were endeavouring to draw the *Delawares* from *Shamokin* to the *Ohio*, and that there were some heart-burnings between the *Delawares* and the Six Nations, and that the former only wanted a favourable opportunity to throw off the yoke, which they afterwards did, and to revenge the insults that had been offered to them at Philadelphia, in 1742. See votes of assembly, vol. 3, p. 553.

We shall now proceed to the causes and circumstances which produced the treaty and purchase of 1749.

A meeting of deputies from each of the Six Nations, had been appointed, by the grand council at *Onondago*, to go to Philadelphia, on business of importance. The *Senecas* first arrived there. "One of the most considerable points," (said their speaker to the governor,) "which induced the council to send deputies at this time, was, that they had heard the white people had begun to settle on their side the blue mountains. And we the deputies of the *Senecas*, staying so long at *Wyomen*, had an opportunity of enquiring into the truth of this information, and to our surprise found the story confirmed, with this addition, that even this spring, since the governor's arrival, numbers of families were beginning to make settlements. As our boundaries are so well known, and so remarkably distinguished by a range of high mountains, we could not suppose this could be done by mistake, but either it must be done wickedly by bad people, without the knowledge of the governor, or that the new governor has brought some instructions from the king, or the proprietaries relating to this affair, whereby we are like to be much hurt. The governor will be pleased to tell us, whether he has brought any orders from the king or the proprietaries for these people to settle on our lands; and if not, we earnestly desire they may be made to remove instantly with all their effects, to prevent the sad consequences which will otherwise ensue."

The governor acknowledges, in answer, That the people's settling on *Juniata* was contrary to the engagements of this government to the *Indians*; that he had received no orders in favour of them; that they had no countenance from the government, and that no endeavours should be wanting on his part to bring the offenders to justice, and to prevent all future cause of complaint. Nothing else was done at this meeting, and the *Senecas* departed; but on their return

they met the other deputies; and after considerable deliberation, and notwithstanding the opposition of *Conrad Weiser*, they all came to Philadelphia, accompanied by some *Mohickans*, *Tutelas*, *Delawares*, and *Nanticokes*, in number two hundred and eighty, about the 14th of August, 1749. *Canassatego* was again the speaker. They renewed the complaints about the settlements on the unpurchased lands; that by treaties all white people were to have been hindered from settling the lands not purchased of them; and if they did, the government engaged to remove them when discovered; but since it might be attended with a great deal of trouble, and having observed the people's settlements, they were willing to give up the lands on the east side of *Susquehanna*, from the blue hills to where *Thomas Magee*, the Indian trader lived, and leave it to the government to assign the worth of them. But as to the hunting grounds of their cousins the *Nanticokes*, and other Indians, living on the waters of *Juniata*, they must use more vigorous measures, and forcibly remove them.

On consultation, and their agreement to extend the purchase, so as to carry its breadth to the Delaware, the following deed was executed on the 22d day of August, 1749.

We *Canasatego*, *Sataganachly*, *Kanalshiyacayon*, and *Canechwadeeron*, sachems or chiefs of the Indian nation called the *Onontagers*, *Cayanockea*, *Kanatsany-Agash Tass*, *Caruchianachagui*, sachems or chiefs of the Indian nation called the *Sinickers*. *Peter Ontachsax*, and *Christian Diaryhgon*, sachems or chiefs of the Indian nation called the *Mohocks*; *Saristagnoah*, *Watshatuhon* and *Anuchnaxqua*, sachems or chiefs of the Indian nation called the *Oneyders*. *Tavis Tavis*, *Kachnoaraaseha*, and *Tukachquontas*, sachems or chiefs of the Indian nation called the *Cayukers*. *Tyierox*, *Balichwanonuch-shy*, sachems or chiefs of the Indian nation called the *Tuscorrow*. *Iachnechdorus*, *Sagoguchiathon*, and *Cachnaora-katack-ke*, sachems or chiefs of the Indian nation called the *Shomoken* Indians. *Nutimus* and *Qualpaghach*, sachems or chiefs of the Indian nation called the *Delawares*; and *Bachsinosa*, sachem or chief of the Indian nation called the *Shawanes*, in consideration of £.500, grant, sell, &c. all that tract or parcel of land lying and being within the following limits and bounds, and thus described. Beginning at the hills or mountains called in the language of the Five Nation Indians *Tyamontasachta*, or endless hills, and by the Delaware Indians *Kekactany* hills, on the east side of the river *Susquehanna*, being in the north west line or boun-

dary of the tract of land formerly purchased by the said proprietaries from the said Indian nations, by their deed of the 11th of October 1736; and from thence running up the said river by the several courses thereof to the first or nearest mountain to the north side or mouth of the creek called in the language of the said Five Nation Indians, *Cantaguy*, and in the language of the Delaware Indians *Maghomioy*, and from thence extending by a direct or straight line to be run from the said mountain on the north side of the said creek to the main branch of Delaware river, at the north side of the mouth of the creek called *Lechawachsein*, and from thence to return across *Lechawachsein* creek aforesaid down the river Delaware by the several courses thereof to the *Kekactany* hills aforesaid, and from thence by the range of said hills to the place of beginning, as more fully appears by a map annexed; and also all the parts of the rivers *Susquehanna* and Delaware from shore to shore which are opposite to said lands, and all the islands in said rivers, &c.

This deed is recorded, May 6th, 1752, in book H, vol. 2, p. 204.

This purchase is distinctly marked by natural boundaries, so as not to be mistaken. And at this treaty the engagement was renewed, that the white people should be removed from the *Juniata*. Proclamations were accordingly issued, but disregarded by the settlers on the unpurchased lands. In May 1750, *Richard Peters*, then secretary of the Land Office, with some magistrates, was sent to remove them. Of this circumstance further notice will be hereafter taken, in the course of the note. See votes of assembly, vol. 4th, p. 137. But these proceedings appear to have had little effect. Numbers were spirited up to stay, and others went and settled by them, so that in a few years the settlements in the Indian country were more numerous and farther extended than ever. See governor Hamilton's message, *ibid.*—and also p. 509, 517, 528.

It is necessary merely to mention the treaty of Carlisle in 1753 *Canassatego*, and several of the sachems attached to the British interests, were dead; and the sachem at the head of the council of the Six Nations was known to be in the French interest, and the affections of that people appeared to be much shaken. Those who adhered to us were threatened by the arms of the French, and Indian affairs wore a most gloomy aspect. See votes of assembly, vol. 4, p. 152. At this critical time the Indian friends were unwilling to do any thing which would give room to sus-

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pect their fidelity. They remonstrated it is true; but they remonstrated without threats. They desired that our people would forbear settling on the Indian lands over the Alleghany hills; for so far had they now encroached, although none of the land on the west side of Susquehanna beyond the north, or Kittatiny mountain had been purchased. They advised the government to call back their people, that none should settle on the *Fortiata* lands, till matters were settled between them and the French, "*lest damage should be done, and we should think ill of them.*" The council books, and votes of assembly shew the great anxiety of the government to strengthen the fidelity of the Six Nations, and of the Delaware and Ohio Indians; communications by means of agents were frequent, and the presents considerable; until the unfortunate purchase of 1754, contributed to kindle a flame which could be extinguished only by a deluge of blood. See votes of assembly, vol. 4, pages 336, 392—4—9.

The treaty of *Albany*, in 1754, with the Six Nations, was held by orders of the king. The lords of trade and plantations had recommended this, that all the provinces, if practicable, might be comprised in one general treaty, to be made in his majesty's name, as the practice of each province making a separate treaty for itself in its own name, was considered to be improper, and attended with great inconveniences to his majesty's service; votes of assembly, vol. 4, pages 279, 280, 286. See the whole proceedings in the minutes of council, Book M, page 339, to 386.

The Indian deed executed at Albany, is dated July 6th, 1754, and is as follows:—

Henry Peters, Abraham Peters, Biant,
Johannes Sautfhorwano, Johannes Kanadaka-
kagon, Abraham Sastaghecholy, sachems
or chiefs of the Mohock nation. Ane-
eghnaxqua Turaghorus, Tshaghahghay-
serr, alias Kachneghelackon, sachems or
chiefs of the Oneydo nation. Otsingh-
yado, alias Burt, in behalf of himself,
and all the sachems and chiefs of the
Onondago nation. Scauraty, Tarnagh-
dorus, Tokaaiyon, Kaghradolon, sachems
or chiefs of the Cayuga nation. Kahich-
dolon, alias, Groat Youngie, Takeghsatu,
Tyontekolawaw, sachems or chiefs of
the Seneca nation. Senrughwackon,
Sagochsidolagom, Tshashawangarus Oron-
taka on, alias John Nixon, Tistoghton,
sachems or chiefs of the Tuscarora na-
tion, in consideration of £ 400 lawful
money of New-York, grant, &c. to
Thomas and Richard Penn, "all the
lands lying within the said province of

Pennsylvania, bounded and limited as follows, namely, beginning at the Kittochtinny or Blue hills, on the west branch of Susquehanna river, and thence by the said, a mile above the mouth of a certain creek called *Kayarondinagh*; thence northwest and by west as far as the said province of Pennsylvania extends to its western lines or boundaries; thence along the said western line to the south line or boundary of said province; thence by the said south line or boundary to the south side of the said Kittochtinny hills; thence by the south side of said hills, to the place of beginning; recorded in Book H, vol. 5, page 392, February 3d, 1755.

The history of this eventful period is still within the memory of many yet living. Many of the Indian tribes seeing their lands gone, joined the French, and in the following year fatally evinced their resentment at *Braddock's* field. The settlers were driven into the interior, their improvements were laid waste, and desolation marked the path of the warriors.

Governor Morris, in his address to the assembly, November 3d, 1755, expressly tells them, "that it seemed clear from the different accounts he had received, that the French had gained to their interest the *Delaware and Shawanese Indians*, under the ensnaring pretence of restoring them to their country: votes of assembly, vol. 4, page 492. The assembly themselves, in a reply to governor *Denny*, in June 1757, say, "it is rendered beyond contradiction plain, that the cause of the present Indian incursions in this province, and the dreadful calamities, many of the inhabitants have suffered, have arisen, in great measure, from the exorbitant and unreasonable purchases made, or supposed to be made of the Indians, and the manner of making them.—So exorbitant, that the natives complain they have not a country left to subsist in;" ib. 718, 722, 728, 737, 738. The fact was indeed notorious in both hemispheres, although some palliation was attempted in the report made of the conferences at *Carlisle* in 1753. After the treaty of 1758, it was however fully admitted by *John Penn* himself, who was then governor, upon communicating a letter from general *Gage*, on the subject of the continued discontent of some of the western Indians; "I would willingly, he said to the assembly, take every measure in my power, not to remove the just causes of their complaints of past injuries, but to protect their persons and properties for the future." And general *Gage's* letter thus communicated, has this remarkable paragraph. "The encroach-

ments made upon the Indian lands, for which they could obtain no justice, with the daily threats of more invasions of their property, lost us the affections of the savages before, and was the principal reason for their throwing themselves into the arms of the French for protection. From hence arose the hostilities they committed upon us in 1754 and 1755, and the war that followed. The same causes will have the same effects. Votes of assembly, vol. 6, pages 7—8.

It further appears from *Conrad Weiser's Journal* of his conference with the Indians at *Aughwick*, that the dissatisfaction with the purchase of 1754, was general. They said they did not understand the points of the compass, and if the line was so run as to include the west branch of *Susquehanna*, they would never agree to it. Whatever pretences there were for it, (for it was suggested that the Connecticut commissioners were endeavouring to treat for some lands claimed by them, and had been making surveys above *Shamoken*, and that this deed was intended to prevent the interference,) it is evident it left but a small part of the province to the natives, and that mountainous, and in a part, too, most open to the Connecticut claimants. The lands where the *Shawaneese* and *Ohio* Indians lived, and the hunting grounds of the *Delawares*, the *Nanticokes*, and the *Tuteloës*, were all included.

It will be evident also, that the course of the deed from *Kayarondinghagh*, or *Penns-Creek*, was greatly mistaken, and that the line northwest and by west, would not strike the western boundary of the province; but would most probably have crossed the west branch of *Susquehanna*, a few miles below the mouth of *Sinnemahoning*, and have intersected the northern boundary a little to the west of *Conewago* creek.

The serious consequences likely to ensue to the British interests, occasioned an application to the proprietors in *England*, from the government, through the lords commissioners of trade, and the proprietors agreed to limit the bounds of the purchase; and a commission was sent over, authorizing and directing a treaty to be held for that purpose, which commission is in the office of the secretary of the Land-Office.

Previous to this treaty, great exertions were made to bring about an accommodation with the *Delaware* and *Shawaneese* Indians, which was at length accomplished. These transactions will be found in the council books, and in the votes of assembly, vol. 4, p. 563, 583, 671, 672, 681.

We come therefore to the deed of October 23d, 1758, executed at *Easton*, which is as follows.

We *Nichai Karaghiagdatie*, one of the chiefs and sachems of the Mohock nation, *Assarodunqua*, one of the sachems and chiefs of the Onondago nation, *Sagebsadon*, or *Tageebata*, one of the sachems or chiefs of the Seneca nation, *Thomas King*, alias *Sagubsonyont*, sachem and chief of the Oneyda nation, *Tokaboyon*, sachem and chief of the Cayuga nation, *Wiskaquontagush*, sachem and chief of the Tuscarora nation, on behalf of ourselves and all the nations aforesaid, send greeting.—Whereas by a deed poll, bearing date at Albany, the 6th day of July, 1754, the sachems and chiefs of the said Six Nations, for, &c. (£400,) did grant and confirm to *Thomas and Richard Penn* all the lands lying within the said province, &c. beginning at the *Kittochtinny* or blue hills on the west bank of *Susquehanna* river, and thence by the said river to a mile above the mouth of a certain creek called *Kaarondinbab* (since *John Penn's* creek,) thence north west and by west as far as the said province of *Pennsylvania* extended, to its western line or boundary, thence along the said western line to the south line or boundary of the said province, then by the said south line or boundary to the south side of the said *Kittochtinny* hill, thence by the south side of the said hill along the said hill to the place of beginning, &c. And whereas by an endorsement in writing on the back of the said deed, it was stipulated and agreed on the part of the said proprietors, by their agent, that whenever the lands in the said deed, over the *Apalachian* or *Alleghany* hill, should be settled, the Indians who signed the deed were to receive a further sum, not exceeding the consideration-money in the said deed mentioned, &c. And whereas since the execution of said deed, it having been represented to the said proprietors, that notwithstanding the said purchase was fairly made, yet there were some among the Indians who were disgusted with the said purchase, and were desirous that all that part of the said purchase for which they were to receive a further consideration by the terms of the endorsement of the said deed should be reserved for them, they the said proprietors, *Thomas Penn* and *Richard Penn*, did authorize, appoint and empower *Richard Peters* and *Conrad Weiser*, esqrs their agents and attornies, to release and surrender to the said Six Nations all the lands comprised within the herein before recited deed, lying to the northward and westward of the *Alleghany* hill, provided they the said Six Nations or their deputies at the same time, did fully and effectually agree, stipulate and settle the exact

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and certain bounds of the residue of the said lands included in the before mentioned purchase, which were still to remain to the said proprietors, after such surrender made, as by a letter of attorney duly executed by the said proprietors, dated 7th of November last past, may more fully appear. And whereas at a treaty held at Easton, on the 23d October, instant, the certain and exact bounds of such parts of the lands included in the before mentioned deed of purchase, which are and shall remain to the said proprietors, have been amicably and freely stipulated and settled between the aforesaid sachems and chiefs, and Richard Peters and Conrad Weiser, esqrs. &c. and are hereby declared to be as follows, that is to say, beginning at the Kittatinny or blue hills on the west bank of Susquehanna river, and running thence up the said river, binding therewith, to a mile above the mouth of a creek called *Kaaronlinbab*, (or John Penn's creek,) thence north west and by west to a creek called Buffalo's creek, thence west to the east side of Alleghany or Apalachian hills, thence along the east side of said hills, binding therewith, to the south line or boundary of the said province, thence by the said south line or boundary to the south side of the Kittatinny hill, thence by the south side of the said hill to the place of beginning, in consideration of the said surrender, and five shillings, &c. And there is a covenant not to convey the residue to any persons else than the proprietors.

Recorded in book 1, vol. 4, p. 488, September 5th, 1768

There is a rude map annexed to this deed, intended to represent the waters on the line from Buffalo creek to Alleghany mountain, which line is represented as passing very near the junction of Spring creek with the Bird Eagle. It is probable the true line, relying on the correctness of Howell's map, would pass Belfont at the mouth of Logan's branch of Spring creek. So cautious, however, were the proprietors, at this period, of offending the Indians, by making surveys beyond the line, that the most positive instructions were given to the deputy surveyors on this head; and as the line was not run, nor its exact position known, the end of Nittany appears to have been assumed as a station, and a west line from thence presumed to be the purchase line. The error was on the safest side, although it is now known the end of Nittany is several miles within the deed of confirmation and surrender. In many instances, applications, where it was probable they called for lands near the line, were retained in the office, and endorsed "*quare, if in the purchase.*" As controversies have existed, and may still exist, respecting this boundary, more can-

not with propriety be said upon this point.

The last purchase of the proprietaries from the Indians, was made at Fort Stanwix, November 5th, 1768, and was as follows.

We *Tyankasare*, alias *Abraham* sachem or chief of the Indian nation called the Mohocks; *Senughsis*—of the Oneidas; *Cbenugbiata*—of the Onondagos; *Gaustarax*—of the Senecas; *Sequarisera*—of the Tuscaroras; *Tagaia*—of the Cayugas, in general council of the Six Nations at Fort Stanwix, assembled for the purpose of settling a general boundary line between the said Six Nations, and their confederates and dependent tribes, and his majesty's middle colonies, send greeting, &c.—In consideration of ten thousand dollars, they grant to Thomas Penn and Richard Penn, all that part of the province of Pennsylvania, not heretofore purchased of the Indians, within the said general boundary line, and beginning in the said boundary line, on the east side of the east branch of the river Susquehanna, at a place called *Owegy*, and running with the said boundary line, down the said branch on the east side thereof till it comes opposite the mouth of a creek called by the Indians *Awandac*, (*Tawandee*,) and across the river and up the said creek on the south side thereof, and along the range of hills called *Burnett's* hills by the English, and by the Indians, on the north side of them, to the heads of a creek which runs into the west branch of Susquehanna, which creek is by the Indians called *Tiadaghton*, and down the said creek on the south side thereof, to the said west branch of Susquehanna, then crossing the said river, and running up the same on the south side thereof, the several courses thereof to the fork of the same river which lies nearest to a place on the river Ohio, called the *Kittanning*, and from the said fork by a straight line to Kittanning aforesaid, and then down the said river Ohio by the several courses thereof to where the western bounds of the said province of Pennsylvania crosses the same river, and then with the said western bounds to the south boundary thereof, and with the south boundary aforesaid to the east side of the Alleghany hills, and with the said hills on the east side of them to the west line of a tract of land purchased by the said proprietors from the Six Nation Indians, and confirmed October 23d, 1753, and then with the northern bounds of that tract to the river Susquehanna, and crossing the river Susquehanna to the northern boundary line of another tract of land purchased of the Indians by deed, (August 22d, 1749,) and then with that northern boundary line to the river Delaware at the

north side of the mouth of a creek called Lechawachsein, then up the said river Delaware on the west side thereof to the intersection of it, by an east line to be drawn from Owego aforesaid to the said river Delaware, and then with that east line to the beginning at Owego aforesaid.

There is also in this deed a release of the Indian tract in Conestogoe manor, in Lancaster county.

Recorded at Philadelphia, in the Roll's Office in book of deeds, No. 3, p. 23, July 12th, 1781; and at Lancaster, in the recorder's office, in book U, p. 68, July 23d, 1781.

This deed incloses a part of Scull's map, with the boundaries marked thereon.

The line from the canoe place, near the head of the west branch of Susquehanna, to the Kittanning was run, and is marked on the maps; but what was the boundary on the northern side of the west branch was uncertain. To prevent controversy with the Indians, no lands were permitted to be surveyed to the west of Lycoming creek, which was considered the probable boundary on that side, although many applications were deposited for lands between Lycoming and Pine creek.

At the treaty at Fort Stanwix in October, 1784, the Pennsylvania commissioners were instructed to enquire what creek was meant by *Tiadaghton*, and also the Indian name of *Burnett's hills*, which was left blank in the deed of 1768. The Indians told them *Tiadaghton* is the same we call Pine creek, being the largest emptying into the west branch of Susquehanna. As to *Burnett's hills*, they called them the *Long Mountains*, and knew them by no other name.

At this treaty, a purchase was made of the residue of the Indian lands within the limits of Pennsylvania, and the deed signed by the chiefs of the Six Nations, is dated October 23d, 1784. The boundaries are thus described, "Beginning on the south side of the river Ohio, where the western boundary of the State of Pennsylvania crosses the said river, near *Sbingo's* old town, at the mouth of Beaver creek, and thence by a due north line to the end of the forty-second and beginning of the forty-third degrees of north latitude, thence by a due east line separating the forty-second and forty-third degrees of north latitude, to the east side of the east branch of the river Susquehanna, thence by the bounds of the late purchase made at Fort Stanwix, the fifth day of November, *anno Domini* one thousand seven hundred and sixty-eight, as follows: "Down the said east branch of Susquehanna, on the east side thereof, till it comes opposite to the mouth of a creek called by the Indians, *Awandac*, and across the river, and up the said

creek on the south side thereof, all along the range of hills called *Burnett's hills*, by the English, and by the Indians

, on the north side of them, to the head of a creek which runs into the west branch of *Susquehanna*, which creek is by the Indians called *Tiadaghton*, but by the Pennsylvanians, *Pine Creek*, and down the said creek on the south side thereof to the said west branch of *Susquehanna*, then crossing the said river, and running up the same on the south side thereof, the several courses thereof, to the fork of the same river, which lies nearest to a place on the river Ohio, called *Kittanning*, and from the fork by a straight line to *Kittanning* aforesaid, and then down the said river *Ohio*, by the several courses thereof to where the western bounds of the said State of Pennsylvania crosses the same river," at the place of beginning.

At a treaty held at Fort *Meintosh*, with the *Wyandott* and *Delaware Indians*, by the same commissioners, January, 1785, a deed was executed by those nations, for the same lands, in the same words, with the same boundaries, which deed is dated January 21st, 1785. Both these deeds, with the treaties, or conferences, are printed at large, in the journals of the assembly, in the appendix to the journal of the session of February—April, 1785.

Thus, in a period of about one hundred and two years has the whole right of soil of the Indians, within the charter bounds of Pennsylvania, been extinguished. The legislature being apprehensive, that the directions given to the commissioners to ascertain the precise boundaries of the purchase of 1768, might produce some inconveniences, declared, by the third section of the act of December 21st, 1784, (post, chap. 111,) "That the said directions did not give, nor ought to be construed to give to the said commissioners, any authority to ascertain, definitively, the boundary lines aforesaid, and that the lines of the purchase so made, as aforesaid, in the year one thousand seven hundred and sixty-eight, striking the line of the west branch of *Susquehanna*, at the mouth of *Lycomick* or *Lycoming* creek, shall be the boundaries of the same purchase, to all legal intents and purposes, until the general assembly shall otherwise regulate and declare the same."

It is necessary to state, that on the 3d of October, 1788, an act was passed, entitled, an act to authorise the supreme executive council to draw on the state treasurer for a sum of money, for defraying the expense of purchasing of the Indians, lands on lake Erie, (chap. 1355.) By which act a sum of £.1200 was granted to purchase the Indian rights, in the lake Erie tract, bargained to be sold by the *United States to Pennsylvania*, and a further grant was added for the same pur-

1784. pose, by an act of the 28th of September, 1789, (chap. 1439.)

The Indian cession of the *Presque Isle* lands, is dated January 9th, 1789, and is in these words.—“The signing chiefs do acknowledge the right of soil, and jurisdiction to, and over that tract of country bounded on the south by the north line of the State of Pennsylvania, on the east, by the west boundary of the State of *New York*, agreeable to the cession of that State and *Massachusetts* to the United States, and on the north by the margin of lake *Erie*, including *Presque Isle*; and all the bays and harbours along the margin of said lake *Erie*, from the west boundary of *Pennsylvania*, to where the west boundary of the State of *New York* may cross or intersect the south margin of the said lake *Erie*, to be vested in the said State of *Pennsylvania*, agreeable to an act of congress dated the 6th of June last, (1788.)

The said chiefs agree, that the said State of *Pennsylvania* shall and may, at any time they may think proper, survey, dispose of and settle all that part of the aforesaid country, lying and being west of a line running along the middle of the *Conowago* river, from its confluence with the *Alleghany* river into the *Chadochque* lake, thence along the middle of the said lake to the north end of the same, thence a meridian line from the north end of the said lake to the margin or shore of lake *Erie*.

By an act of the 13th of April, 1791, (chap. 1556,) the governor was authorized to complete the purchase from the *United States*, which, according to a communication from him to the legislature, was done in March, 1792; and the consideration money, amounting to 151,640 dollars and twenty-five cents, paid in continental certificates, of various descriptions.

The deed of confirmation from the *United States* is dated March 3d, 1792, which is recorded in the Roll's Office, in deed book, No. 31, p. 107, April 25, 1792.

A draught is annexed of the triangle, as containing two hundred and two thousand one hundred and eighty-seven acres.

These papers remain in the office of the secretary of the commonwealth.

Having thus given a connected view of the Indian purchases, and some notices of the discontent occasioned by encroachments on the Indian lands; it is material to state the acts of the government, legislative and executive, to restrain these illegal proceedings and restore harmony between the province and the Indian tribes; and finally to shew their operation upon a certain class of land titles.

The proprietors professed not to sell any lands beyond the boundaries of the purchases. If surveys were made over them without their consent, they were illegal and void. To have departed from this principle would have occasioned wars of a most fatal kind to the interests of the province; and would have been a violation of the most solemn engagements with the natives. The line of duty was therefore plain, and every moral and political obligation, commanded them to pursue it.

By an act passed in 1700, (chap. 20,) it was enacted, “That if any person, presume to buy any land of the natives, within the limits of this province and territories, without leave from the proprietaries thereof, every such bargain or purchase shall be void and of no effect. To this act there was a supplement, passed February 14th, 1729-30, (chap. 312.)

By an act passed February 3d, 1768, (chap. 570,) after the preamble in these words, “Whereas many disorderly people, in violation of his majesty's proclamation, have presumed to settle upon lands not yet purchased from the Indians, to their damage and great dissatisfaction, which may be attended with dangerous and fatal consequences to the peace and safety of this province,” it was enacted, that if any person settled on the unpurchased lands, neglected or refused to remove from the same within thirty days after they were required so to do, by persons to be appointed for that purpose by the governor, or by his proclamation, or being so removed, should return to such settlement, or the settlement of any other person, with or without a family to remain and settle on such lands, or if any person, after such notice, resided and settled on such lands, every such person, so neglecting or refusing to remove, or returning to settle as aforesaid, or that should settle after the requisition or notice aforesaid, being legally convicted, *was to be punished with death without benefit of clergy.* But this act was not to extend to persons then, or thereafter settled on the main roads, or communications, leading through the province to *Fort Pitt*, with the approbation and permission of the commander in chief of his majesty's forces, &c. or in the neighbourhood of *Fort Pitt*, under such permission, or to a settlement made by *George Croghan*, deputy superintendent of Indian affairs, under *Sir William Johnson*, on the *Ohio*, above the said fort.

And if any person or persons, singly or in companies, presumed to enter on any such unpurchased lands, to make

surveys thereof, mark, or cut down trees thereon, and should be convicted thereof, was, or were, to be punished by a fine of fifty pounds, and three months imprisonment.

This act was limited to one year, and to the end of the next session of assembly. On the 17th of February, 1768, an act was passed, appropriating a sum of money to be applied to removing the discontent of the Indians, &c. (chap. 571.)

And on the 18th of February, 1769, an act was passed (chap. 587,) with a similar preamble, to punish by a fine of five hundred pounds, and twelve months' imprisonment, any person or persons, who, singly, or in companies, should presume to settle upon any lands within the boundaries of this province, not purchased of the Indians, or who should make, or cause any survey to be made of any part thereof, or mark or cut down, any trees thereon, with design to settle or appropriate the same to his own, or to the use of any other person, &c. (Galloway's edition, page 355.)

This act, being without limitation, expired only on the extinguishment of all the Indian titles.

The reason of passing laws so highly penal, will be found in the votes of the assembly, vol. 6th, p. 7—8. The intruders who had been removed, had returned to their settlements. By the communications from Sir William Johnson and General Gage, it appeared that there were apprehensions of an immediate rupture with the Indians; proclamations had proved to be ineffectual, and it was earnestly required that more effectual provisions should be made for that purpose, "before it should be too late to prevent the devastations, cruelties and effusion of blood attendant on an Indian war, which might be experienced soon, unless active measures were adopted, for the redress of the grievances of which the Indians complained."

Indeed, so desirous was the government to prevent any cause of uneasiness with the Indians, that in April 1760, an act was passed (chap. 456, vol. 1, p. 227,) inflicting the penalty of fifty pounds, and twelve months' imprisonment, to hunt, or follow wild beasts, &c. without the limits of the lands purchased of the Indians by the proprietaries.

We have already given some account of the complaint of the Indians against the encroachments on their lands at Tulpehocken, on the lands on the Juniata, over the Kittatinny hills and in the forks of Delaware, and the manner by

which they were quieted. All the different conferences and treaties with the natives are fairly entered in the council books, to which access has been had to establish facts; this part of the note will therefore be closed with a brief view of such acts on the part of the executive as have been deemed material.

A proclamation was issued July 18th, 1749, in consequence of the complaint of the Senecas, previous to the purchase of 1749, commanding all persons seated on lands not purchased of the Indians, lying westward of the blue hills, to remove therefrom; reciting, among other things, "That these persons had neither license from the proprietaries, nor colour of title to said lands, and to permit them to stay there, would not only be a breach of the public faith given to the Six Nations, but may occasion dangerous quarrels with them, and be the cause of much bloodshed." Council books, M, p. 30.

At the treaty which ended in the purchase of 1749, the speaker *Canassatego*, mentions that he had seen the papers, (proclamations,) ordering the people to remove in consequence of the complaints made by the *Senecas*, and thanked the governor for taking notice of them, and taking measures to turn them off; but, said he, we are apprehensive that no better effects will follow these, than former ones of the same nature; if not, we must insist on it, that as this is on the hunting ground of our cousins the *Nanticokes* and other Indians living on the waters of the *Juniata*, we use more vigorous measures, and forcibly remove them. We must not be deprived of our hunting country; and indeed it will be an hurt to you, for all we kill goes to you, and you have the profit of all the skins. We therefore repeat our earnest intreaties, that they may all be immediately made to go away with their effects, that this country may be entirely left vacant, *ibid.* p. 36. This was promised to be done; and some kind of force became necessary; which will produce to view a transaction ever memorable in the land history of Pennsylvania.

On the 25th of May, 1750, governor *Hamilton* informed the council, that Mr. *Peters* the secretary, and Mr. *Weiser*, the Indian interpreter, were then in *Cumberland* county, in order to take proper measures, with the magistrates, to remove the settlers over the hills, who had presumed to stay there, notwithstanding his proclamation; and laid before them the minutes of a conference held at Mr. *Croghan's* in *Pennsborough* township, as well with Mr. *Montour*, as with some *Shamokin* and *Cones-*

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togor Indians. The Indians expressed themselves pleased, to see them on that occasion; and as the council at *Onondago* had this matter exceedingly at heart, they desired to accompany them; but, said they, notwithstanding the care of the governor, we are afraid that this may prove like many former attempts; the people will be put off now, and come next year again; and if so, the Six Nations will no longer bear it, *but do themselves justice*. Then follows the report of Mr. *Peters*, entered at large, and also printed in the votes of assembly, vol. 4, p. 137. By which it appears, that on the 22d of May they proceeded to a place on Big Juniata, about twenty-five miles from its mouth, where there were five cabins, or log houses, one possessed by *William White*, another by *George Cahoone*, the others by men of the names of *Hiddeston*, *Galloway*, and *Lycan*. These men, except *Lycan*, were convicted by the magistrates upon view, in pursuance of the act of February 14th, 1729-30, (chap. 312,) and the cabins were burnt. A number of cabins were also burnt at *Shearman's* creek, and *Little Juniata*. On the thirtieth of May, they proceeded into the *Tuscarora* path, or *Path valley*, and burnt eleven cabins; at *Aughwick*, they burnt the cabin of one *Charlton*, and another unfinished one, and three were burnt in the big cove. The settlers, who were numerous, were recognized to appear at the following court. The report is long, but interesting, and may be readily referred to in the printed journals. Every public document thus incontestibly proves the invalidity of settlements and surveys on the unpurchased territory. See minutes of council, Book, M, p. 58 to 71.

April 18th, 1752, commission and license to *Andrew Montour*, to settle and reside in any place he should judge convenient and central, and to preserve the lands from being settled by others, and warn all off who had presumed to go there; and to report the names of such as settled there, that they might be prosecuted. *Ibid.* 151.

The proceedings at *Albany* in 1754, have been already transiently mentioned. One of the great objects of that treaty was to remove the discontents, and strengthen and confirm the wavering fidelity of the Six Nations; and, as is expressed by the lords of trade, "at so critical a conjuncture, to put them upon their guard against any attempts which may be made to withdraw them from his majesty's interest; and that nothing may be wanting to convince the Indians of the sincerity of our intentions, you will do well to examine into the complaints they have made of being *deprived of their lands*, to take all proper and legal methods to redress their

complaints, and to gratify them by reasonable purchases, or in such other manner, as you shall find most proper and agreeable to them, for such lands as have been unwarrantably taken from them, or for such other as they may have a desire to dispose of." *Ibid.* 341.

The proceedings of this treaty enter deeply into the provincial history of this country, and but a small part of it is applicable to the subject of this note. The editor cannot, however, avoid remarking, that here may be traced, in considerable detail, the artful measures of persons pretending claims under *Connecticut* to lands within the charter bounds of *Pennsylvania*, and their clandestine proceedings in obtaining a deed from certain Indians for the *Susquehanna* lands, after the sale to *Pennsylvania*, and a full view, exhibited by the proprietary commissioners to them, at their own request, of all the original deeds; the cause of infinite trouble and expense, the effects of which are yet painfully experienced. At this treaty, also, a plan of union among the colonies, was drawn up and adopted, to be laid before the respective colonies, on principles which have since more extensively and beneficially been carried into effect by the constitution of the *United States*.

Proclamations for the removal of certain settlers at *Cusbetsunk* on Delaware, Feb'y 20th, 1761, council books, S, p. 85—a 4 September 16th, 1761, *ib.* 179—and June 2d, 1763, *ib.* 387.

The royal proclamation of 7th October, 1763, expressly prohibited any settlements on lands unpurchased from the Indians, and commanded such settlers forthwith to remove. *ib.* p. 431.

Proclamation commanding settlers on unpurchased Indian lands immediately to evacuate and abandon them. Council books, F, p. 121. Dated September 23d, 1766.

On the 24th of February, 1768, a proclamation was issued by governor *John Penn*, which, after reciting the act of February 3d, 1768, (*supra*,) proceeds thus. "In pursuance therefore, of the said act, I have thought proper, by the advice of the council, to issue this my proclamation, hereby giving notice to all and every such person and persons who are settled upon any lands within the boundaries of this province, not purchased of the Indians, by the proprietaries thereof, (except as in the said act is excepted,) to remove themselves and their families, off and from the said lands, on or before the first day of May next ensuing. And I do hereby strictly charge and command such person and persons, under the pains and penalties by the said act imposed, that they do not, on any pretence whatever, remain or continue on the said lands, longer than thirty days after the said first day of

May next." Council books, T, page 288.

The next matter to be considered, is, how far judicial decision has strengthened and supported the principles apparent in all the foregoing proceedings.

In *Plumsted's lessee v. Rudebagh, Westmoreland*, May 1795, before McKean, C. J. and Yeates, J. *MSS. Reports*. Plaintiff claimed under a special order of survey to *D. Franks*, on the 1st of April, 1769. Surveyed in June, 1769, and followed by patent, in Feb'y, 1787.

The defendant offered to prove, that his father, *Christopher Rudebagh*, settled on these lands in 1761, before the Indian purchase, in consequence of a military permit from colonel *Boquet*, which he alleged was lost by the casualty of fire; but that his uninterrupted possession until his death would be *presumptive evidence* thereof; and that he had made considerable improvements thereon. (Defendant had obtained a warrant for the land in December, 1784.)

This evidence was excepted to, and overruled.

By the Court.—How can the parol evidence affect the present question of right? In 1761, the soil belonged to the *Aborigines*. Neither the act of assembly, nor the proclamation of 1768, gave the settler before the Indian purchase any title to the lands. By the act it was made highly penal either to make other settlements on the Indian lands, or not to remove from those already made.

On the opening of the Land-Office, on the 3d of April, 1769, it was declared "That those who had settled plantations, especially those who had settled by permission of the commanding officers to the westward, should have a preference"—What does this preference mean? Does it not suppose that an application should be made by such settlers, to the Land-Office, on 3d April, 1769, or in a reasonable time, afterwards, for this *favour*, in order to secure their possessions? Neither old *Rudebagh*, nor his son, applied for any supposed preference of these lands until December, 1784, above fifteen years after the commencement of the plaintiff's title; and this will not be pretended to be in due and convenient time. To introduce witnesses to prove these improvements would, in our idea, be irrelevant to the point of right, after such great negligence. Such a measure would make the titles of lands, which should be permanent and fixed, to depend on parol evidence, and open a wide door to perjury.—Verdict for plaintiff.

So, in the lessee, of *David Sherer v.*

Thomas McFarland, Westmoreland, May 1797, before Yeates and Smith, Justices, *MSS. Reports*. The plaintiff claimed under a warrant for 200 acres of land, including an improvement, on the waters of *Sesivickly*, &c. dated 24th of June 1785, and a deed poll of the improvement from *John Loydick* to *William Mount*, dated 11th of January, 1775, and another deed from *Mount* to *Sherer*, dated 21st January, 1778, and he offered to prove, that one *Abraham Leasure* made a considerable improvement on these lands in 1768 and 1769, before the opening of the Land-Office, and that *John Loydick* derived title under him. This evidence was objected to.

By the Court. We are no enemies to *bona fide* improvements, restricted within rational limits; but these were never deemed to extend beyond the lands purchased from the Indians. Such a system would be wild, as well as highly impolitic, and would tend to deluge the country in blood, by provoking the savage nations to hostilities.

Under the law of 3d of February, 1768, all persons were interdicted from settling on the Indian lands, under the highest forfeiture known in society; and by an act of 18th of February, 1769, persons making such settlements, or making surveys, or marking, or cutting down trees with design to settle, or appropriate such lands, incur a penalty of £500, and twelve months' imprisonment. It cannot be possible, that such daring infringers of the laws, could gain any title by unauthorized acts of trespass, against the solemn declared will of the community?

It must be admitted, that the lords of the soil had the exclusive right of disposing their lands in their own mode. Immediately after the Indian treaty at *Fort Stanwix*, was closed on the 4th November, 1768, the people were publicly notified, that improvements on the newly purchased lands should give them no advantage whatever; and the same information was given on the opening of the Land-Office. It cannot therefore be doubted, but that to obtain a title to the lands lately sold by the natives, it was absolutely necessary to apply to the Land-Office in the usual and accustomed method.

Such have been the uniform decisions of courts of justice, in which we fully acquiesce. To establish a contrary doctrine, would introduce insecurity of property, and every species of mischief. The testimony offered is therefore overruled.

Defendant claimed under an application of 3d of April, 1769, a survey and patent. The plaintiff suffered a nonsuit.

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And, in *Drinker's lessee, v. Hunter*, Northumberland, October, 1796, before the same judges. (MSS. Reports.) The court after argument, declared that no settlement on, or improvement of lands out of the limits of the Indian purchases, after the law of 3d of February, 1768, gave any pretensions of pre-emption to the parties making them, or shadow of title, nor would the court suffer evidence of such settlements or improvements to go to the jury.

And in a still stronger case, at the same court, (MSS. Reports,) in the lessee of *Peter Weiser, v. Samuel Moody*, The plaintiff claimed under a patent dated 7th of July, 1755, issued to *Conrad Weiser*, his grandfather, in consideration of his services, as interpreter to the Six Indian Nations, and of £. 5. It recited a warrant dated 21st of January, 1755, (which was not shewn in evidence,) and a survey thereon of 305 acres, 36 perches, and allowance made on the 9th of June, 1755.

The warrant issued in consequence of the special directions of the late proprietaries, dated the same day. It was an order in favour of *Conrad Weiser and Richard Peters*, for 4000 acres, in any part of the new purchase lately made of the Indians; and the deputation from *Nicholas Scull*, the Surveyor-General, to *Samuel Weiser*, was to survey for his father, a tract on Susquehanna, a small distance above the tract lately confirmed to him. This tract lay two miles from the land in question.

Nothing appeared on the face of the survey, or any of the papers produced by the plaintiff, which could have denoted, that the lands in controversy lay out of the then Indian purchase, which was admitted to be the case.

The defendant claimed under an application dated 24th of May, 1769, after the treaty at *Fort Stanwix*, descriptive of the disputed grounds, and a survey made thereon, on the 23d of August, 1769.

The court declared their opinion to the jury, that if the late proprietaries, or their officers, knew that the lands surveyed for *Conrad Weiser*, lay out of the then Indian purchases, and granted them under full knowledge thereof, the patent would enure for the benefit of the patentee, when the lands came afterwards to be purchased of the Indians; and the proprietaries could not pass the title to a stranger. It might be compared to a person's selling lands without title, and afterwards obtaining a right thereto, where the vendor would hold in trust for the vendee.

The proprietaries enjoyed a grant from Charles II. to their ancestor *Wil-*

liam Penn; but they did not rely solely thereon. They bought the lands from the natives, and gave them valuable considerations therefor. Herein they evinced a strong sense of moral honesty, as well as sound extended policy. It cannot, therefore, be presumed that the proprietary officers knew the lands surveyed for *Conrad Weiser*, to be without the limits of their purchases. It would form an exception to their uniform established practice, and ought to be clearly shewn. The warrant in all probability, pursued the terms of the special order, and was for lands "in some part of the new purchase." The order to *Samuel Weiser*, to make the appropriation, called for lands a small distance from another tract, which was confessedly within the purchase. If other words were used in the warrant, it ought to be shewn; and its absence induces a presumption, that if produced, it would operate against the party. No mountains or waters are to be seen on the survey, from whence it might be inferred, that the lands designated thereby, were out of the Indian purchase. If the king is deceived in his grant, it will be avoided. Any contract or deed will be vitiated by *allegatio falsi, sive suppressio veri*. The plaintiff suffered a nonsuit.

This principle is fully recognized in *Kyle's lessee v. White*. Both plaintiff and defendant had settled on the Indian land, on Juniata, previous to the purchase of 1754. Neither of them, says the chief justice, can derive title from the date of their improvements, because they were made against law, on lands not purchased of the Indians. 1 *Binney*, 248. This case will be again cited for other purposes.

As settlements under military permits are excepted by the act of February 3d, 1768, and the proclamation of the 24th of the same month, it is proper that class of cases should be considered here. During the Indian warfare, it was necessary for the accommodation of the armies on the line of their march, that such settlements should be encouraged in the wilderness. And it was reasonable, that persons who by such permission, had settled plantations, at the risque of their lives, for public accommodation, (throwing aside all motives of private interest, which, no doubt, had their influence,) should have the preference, when the office was open for the sale of the lands. Such preference was accordingly given.

In *Blaine's lessee v. Crawford, Allegheny*, May, 1793, before *M^r Kean, C. J.* and *Tates, J.* (MSS. Reports.) It is

recognized as a principle, that a military permit to settle and improve lands, is not to be regarded, unless followed by a settlement and improvement.

In the lessee of *Todd, v. Ackerman, Westmoreland*, May, 1793, before *M'Kean, C. J. and Teates, J.* (MSS. Reports.) A question was raised, whether a person claiming under a military permit, did not lose his preference, by not entering his application on the third of April, 1769. On the single abstract point, it was held, "that a settler under a permission of a commanding officer, to the westward, did not lose his preference by omitting to apply to the Land-Office on the third of April, 1769." But how early such application ought to have been made, was not then decided. It must be in a reasonable time, as mentioned above in *Plumsted and Rudebagh*.

But, in the lessee of *Bernard Gratz, v. Patrick Campbell, Westmoreland*, November, 1800, before *Teates and Smith, Justices*, (MSS. Reports,) The plaintiff claimed a moiety of the land under a special order to *David Franks*, of the 1st of April, 1769, a survey thereon made 1st June, 1769, and a conveyance from *Franks*.

The defendant offered to shew, that he made a settlement on these lands in 1761, before the Indian purchase, under a military permit, which he asserted to have been lost; and that *Christopher Hayes*, the agent of the said *Franks*, had agreed to the running of a line between him and his principal. It was admitted, that he took out no office-right until 1784.

But the Court said, that such evidence, in a case so circumstanced, would introduce the utmost confusion, and impair former determinations. Here it is not attempted to shew by parol evidence, that such a military permit ever existed. But if this had been shewn, it was incumbent on the party to obtain an office-right after the opening of the Land-Office on the third of April, 1769, or in a reasonable time afterwards; and no case has yet gone further than by extending that time to the month of July following. Here the warrant was not obtained till 1784, and the military permit had, long before, lost its preference. As to the consent of *Hayes* to a line, it can have no effect, unless he was authorized to settle boundaries. The evidence was over-ruled, and verdict for plaintiff.

Before we proceed to the general subject of the Land-Office, it is proper to bring into view the public transactions respecting boundaries with the adjoining states.

With respect to the state of *New-Jersey*, there could be no controversy as to the general boundary of the river *Delaware*, but the jurisdiction in and over that river, and the islands therein, became the subject of compromise.

An agreement was accordingly entered into by the two states, by means of commissioners, on the 26th of April, 1783, and ratified by act of assembly, passed 20th of September, 1783, (chap. 1024,) all which may be seen at large in this volume, ante. page 77, and need not be repeated here; see also an act annexing the different islands in the Delaware allotted to this state, to the jurisdiction of the adjoining counties, 26th of September, 1786, (post. chap. 1234.)

With respect to *New-York*, commissioners were appointed, in pursuance of an act passed 31st of March, 1785, (chap. 1143,) to join with commissioners on the part of the state of *New-York*, to ascertain the northern boundary of this state, from the river Delaware, westward, to the northwest corner of *Pennsylvania*. This duty was executed, and the line run and marked, which line was ratified and confirmed by an act passed September 29th, 1789, (post. chap. 1446,) which, as it may be seen at large in this volume, need not be repeated in this note. By an act passed 27th of March, 1790, (chap. 1489) three hundred pounds were granted to *Reading Howell*, for delineating on his map all the lines of this state, as established by law, or otherwise fixed and ascertained.

The draughts of the Delaware, and the boundary line between this state, of and the state of *New-York*, returned by the respective commissioners, are deposited in the office of the secretary of the commonwealth.

A considerable part of the lands now within the jurisdiction and boundaries of *Pennsylvania* was claimed to be within the dominion of *Virginia*, and was possessed by rights under that colony. It was determined in 1754, to build a fort, to prevent the encroachments of the French, at the Fork of *Monongahela*, where *Pittsburg* now stands. And to encourage the enlistment of troops, the following proclamation was issued, by governor *Dinwiddie*, on the 19th of February, 1754:

"Whereas it is determined, that a fort be immediately built on the river *Ohio*, at the fork of *Monongialo*, to oppose any further encroachments, or hostile attempts of the French, and the Indians in their interest, and for the security and protection of his majesty's subjects in this colony, and as it is absolutely ne-

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cessary, that a sufficient force should be raised to erect and support the same: For an encouragement to all who shall voluntarily enter into the said service, I do hereby notify and promise, by and with the advice and consent of his majesty's council of this colony, that over and above their pay, two hundred thousand acres of his majesty, the king of Great-Britain's lands, on the east side of the river *Ohio* within this dominion, (one hundred thousand acres whereof to be contiguous to the said fort; and the other one hundred thousand acres to be on or near the river *Ohio*;) shall be laid off and granted to such persons, who by their voluntary engagement, and good behaviour, in the said service, shall deserve the same. And I further promise, that the said lands shall be divided amongst them immediately after the performance of the said service, in a proportion due to their respective merit, as shall be represented to me by their officers, and held and enjoyed by them without paying any rights, and also free from the payment of quit-rents, for the term of fifteen years. And I do appoint this proclamation to be read and published at the court-house, churches and chapels, in each county within this colony, and that the sheriffs take care the same be done accordingly."

As this proclamation was transmitted by governor *Dinwiddie* to governor *Hamilton*, the latter gentleman wrote thus, in answer, on the 13th of March, 1754.

"The invasions, &c. having engaged me to inquire very particularly into the bounds and extent of this province westwardly; I have from thence the greatest reason to believe that the fort and lands (intended to be granted,) are really within the limits of *Pennsylvania*. In duty to my constituents, therefore, I cannot but remind you of what I had the honour to write to you some time ago, upon this subject; and transcribe for your consideration the following extracts from two letters of the honourable Proprietor *Thomas Penn*, in relation to this matter.

"I desire you will enter into any reasonable measures to assist the governor of *Virginia* to build a fort there, to wit, at the *Ohio*, taking some acknowledgment from him, that this settlement shall not be made use of to prejudice our right to that country, at the same time you give him assurance the settlers shall enjoy the lands they settle *bona fide*, on the common quit-rent, &c. March 9th, 1752."

"I hope you will, as I wrote you on the 9th of March, acquaint the governor of *Virginia* that we consent to this, (that is, to the building of a fort at

Ohio;) without prejudice to our right to the land, in case it should be found to lie within our province, to be granted to the *bona fide* settlers on the same rent and conditions as they are to have it from *Virginia*. July 13th, 1752."

"As Mr. *Penn*'s expectations herein appear to me extremely reasonable, and cannot, I apprehend, at all interfere with the well judged encouragement you have thought fit to promise to such as shall enter into this service, I flatter myself you will find no difficulty in making the acknowledgment therein mentioned, as I on my part am ready to give you any assurance that the *bona fide* settlers shall be entitled to the lands under this government on the same rent and conditions as are granted by you, &c."

March 21st, 1754, governor *Dinwiddie* writes in reply, "I am much misled by our surveyors, if the forks of *Monongialo* be within the limits of your Proprietor's grant; I have for some time wrote home to have the line run, to have the boundaries properly known, that I may be able to appoint magistrates on the *Ohio*, (if in this government,) &c."

In the mean time, that no hindrance may be given to our intended expedition, I think it highly reasonable, if these lands are in your Proprietor's grant, that the settlers thereon should pay the quit-rents to Mr. *Penn*, and not to his majesty; and therefore, as much as lies in my power, I agree thereto, after the time granted by them by my proclamation to be clear of quit-rent, ceases; but surely I am from all hands assured, that *Logstown* is far to the west of Mr. *Penn*'s grant."

This fort was shortly afterwards, taken, and possessed by the French under the name of fort *Du Quesne*; and the military grants never fully took place; but divers settlements had from time to time been made under *Virginia* rights, which in the amicable settlement of the boundary, in and after the revolution, were provided for as follows.

By an act passed April 1st, 1784, (post. chap. 1088,) a certain agreement between the states of *Pennsylvania* and *Virginia*, concluded and signed, on the 31st of August, 1779, was recognized and finally ratified, together with the conditions proposed by the state of *Virginia*, in their resolves of the 23d of June, 1780, as follows; to wit, "That the line commonly called *Mason and Dixon's* line, be extended due west, five degrees of longitude to be computed from the river *Delaware*, for the southern boundary of *Pennsylvania*, and that a meridian drawn from the western extremity thereof, to the northern limits of the said states respectively, be the

western boundary of Pennsylvania, forever, on condition that the private property and rights of all persons, acquired under, founded on, or recognized by, the laws of either country, previous to the date hereof, be saved and confirmed to them, although they should be found to fall within the other, and that in decision of disputes thereon, preference shall be given to the elder, or prior right, which ever of the said states the same shall have been acquired under, such persons paying, within whose boundary their land shall be included, the same purchase or consideration money, which would have been due from them to the state under which they claimed the right, &c. This agreement, and conditions annexed, had been adopted by resolution of the legislature of Pennsylvania, Sept'r 23d, 1780.

Hence has arisen, in Pennsylvania, a particular, local, species of land titles, out of the common terms and usages, of the Land-Office, and laws respecting it.

To connect the subject, and, as much as possible, to avoid confusion in so long a note, the cases decided on this part of the general subject, will be here given.

In *Smith's lessee v. Basil Brown, Fayette*, May, 1795, before *McKean*, C. J. and *Yeates*, J. it was held—That a prior improvement under Pennsylvania, shall prevail against a Virginia certificate, under the compact between the two states. The custom of granting the lands to real improvers, is recognized by our laws. Between claimants under Virginia, the certificate of the commissioners is conclusive, but not where one of the parties claims under Pennsylvania. There can be no doubt, but that on every principle of moral and political obligation, the compact between the two states should be held inviolate. *MSS. Reports.*

This case will be cited more at large upon another point.—

And, in the lessee of *Samuel Hyde v. William Torrence*, Washington, May, 1799, before *Yeates* and *Smith*, Justices. *MSS Reports.* The plaintiff claimed the premises under an early improvement made by *Thomas Provence*, which originated in 1767, and was continued until 1783, without interruption. On the 8th of May, 1782, he conveyed to *Aaron Jenkins*, in consideration of £200, who leased to *Joseph Ross*, under the yearly rent of 150 bushels of corn; and the tenant afterwards improperly permitted *Martin Harden*, the son of defendant's landlord, to come into possession, on his receiving a bond of indemnification. On the 26th of July, 1783, *Jenkins* conveyed to the lessor of the plaintiff in

consideration of £300, who, on the 24th of November, 1789, obtained a warrant for 200 acres, including *Provence's* improvement, whereon interest was to commence from the 1st of March, 1770, but got no survey.

The defendant, as tenant to *John Harden*, claimed under two titles. 1st. An application of *John Husk*, for 300 acres, on the west side of *Monongahela*, at the mouth of Big White Lick creek, dated 13th of June, 1769; a deed from *Husk* to *Harden*, in consideration of £50, dated 20th of April, 1783; and a survey of 222 1-2 acres, made on the 18th of July following. 2d. A certificate of the Virginia commissioners, "That *Edward Arsen* is entitled to 400 acres, on *Monongahela* river, on the mouth of *Whitely* creek, to include the settlement and improvement whereon *Thomas Provence* lives, made in 1767, dated 9th Feb'y, 1780, which was regularly entered with the surveyor of the county, on the 7th of March following; and a conveyance from *Arsen* to *Harden*, dated 20th January, 1783, in consideration of £200.

Evidence was offered to prove, that *Arsen* was no settler under the Virginia law of 3d of May, 1779, "by making a crop of corn, or residing on the land for one year before the 1st of January, 1778," and that if he asserted himself as such to the commissioners, he was guilty of misrepresentation and gross deception, which would have been examinable by the chancellor of *Virginia*, either as a fraud, or trust. But on the face of the certificate, it would rather appear, that *Arsen* did not claim under a settlement made by himself, or others for him, but would avail himself of the improvement and settlement made by *Provence* in 1767.

This was opposed by defendant's counsel, who contended that the certificate was conclusive evidence of the facts which it contains, and cannot be contradicted by any proof consistently with the solemn compact between the two States. It must be considered as the judgment of a court of justice, acting on a subject within its jurisdiction. The laws of Virginia must govern. It must be presumed that the acts of the commissioners were rightfully done, and that they did not exceed their authority. Their duty was to adjust the claims of settlers, and it is absurd to suppose they would give a certificate to any one, without previously determining that he was a settler. If *Provence* intended to controvert the truth of the certificate, he might have prosecuted his claim by appeal to the general court before the 1st of December, 1780. In

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1784. no other way could the certificate be impugned. It is admitted that an elder, or prior right under *Pennsylvania* may be opposed to it, but none such exists here. After the 1st of December, 1780, the certificate could not be controverted in *Virginia*, by the laws of that State; nor, in *Pennsylvania*, after the compact. *Provence* did not prosecute his right before the *Virginia* commissioners, nor by appeal to the general court: and he cannot set up a title under his improvement *begun before the treaty at Fort Stanwix*, on the 4th of November, 1768.

B the Court. Is a *Virginia* certificate undeniable evidence of the facts set forth in it? or is it competent to a claimant under this State, to examine into the merits of such certificate? This is the mere abstract question, and in the determination thereof, we feel ourselves bound to pay the most sacred regard to the compact between the two States.

We think the point has already been resolved in this court, in *Smith's* lessee *v. Brown*, "between claimants under *Virginia*, the certificate of the commissioners is conclusive evidence, but not where one of the parties claims under *Pennsylvania*." We apprehend this must have been the clear intention of the contracting States. A *Pennsylvania* claimant is at liberty to shew fraud, mistake, or a trust. Suppose a certificate stating a party to have made a settlement in a particular year, and it could be shewn he did not come in from *Europe* till after the 1st of January, 1778, and that a title under this State did accrue before his arrival; what good reason can be assigned why these facts should not be received in evidence?

The operation of the certificate necessarily must be, that, *prima facie*, the facts contained in it shall be deemed true; but not undeniably so. But it has been said that *Provence* should have gone before the *Virginia* commissioners, or have appealed to the general court of that commonwealth. This cannot reasonably be insisted on, as to a person asserting a different jurisdiction! Besides, how does it appear that he had notice of *Arsken's* application for the certificate, or of its being granted to him? This was *res inter alios acta*, and a judgment affects only parties or privies.

Our opinion on the present point, is confined to the defendant's *Virginia* title. The plaintiff sets up no claim under *Virginia*. The plaintiff cannot found his pretensions to the land under the laws or customs of *Pennsylvania*, by any

improvements made thereon before the 4th of November, 1768. But here his settlement has been continued peaceably down until 1783, when he was stripped of possession by a trick practised on his tenant. Opposed merely to the defendant's *Virginia* certificate, if there really was no settlement made by *Arsken*, his improvements and peaceable possession ought to prevail.

Whether the application of *Husk*, calls for the land with clearness and precision—Whether it has been abandoned, or, the not obtaining a survey thereon, until 1783, can rationally be accounted for, under the circumstances of the country resulting from a conflict of jurisdictions, are matters of fact to be determined by the jury, but thereon the verdict ultimately depends. Verdict for the plaintiff.

In the lessee of *Thomas Jones v. James Park and Benjamin Kinsoie, illegitimus*, May 1799, MSS. Reports. The plaintiff claimed under a patent, dated in 1785, and made a regular title under divers mesne conveyances, to 340 acres of land, the subject of controversy.

The defendant held under a certificate granted by the *Virginia* commissioners to *Zadock Wright*, on the 18th of February, 1783, stating that he was entitled to 460 acres of land, at the mouth of *Montour's run*, in *Youghiogena* county, to include his settlement made in 1772."

A witness proved, that in 1772, *Zadock Wright* had settled a tract at the mouth of *Montour's run*, different from the lands in question. That *John Westfall* had settled another tract 3-4ths of a mile above the mouth thereof, and *Abel Westfall* one other tract below its mouth; and that the title of *Zadock Wright's* tract, since became vested in *Jeremiah Wright*. On inspection of a diagram, which represented all the tracts together, it was manifest that the terms of the *Virginia* certificate called for the lands held by *Jeremiah Wright*.

It was then offered to prove that the *Virginia* certificate was intended to protect and secure the improvement of *John Westfall*, which was objected to, and overruled.

Such testimony would render all property held under titles of this nature insecure. The terms of the written paper must govern, and it is evident that the certificate was intended for the lands now occupied by *Jeremiah Wright*. *Zadock Wright*, made his settlement there, at the mouth of *Montour's run*. We are no strangers to the mode of procedure adopted by the *Virginia* commissioners. They never

granted two certificates to the same person, unless he claimed one of the tracts as assignee of some other, and in such case it was uniformly expressed in the certificate. Here it is not so expressed, and the consequence is obvious, that the plaintiff is entitled to recover. Verdict for the plaintiff *instante*. Same judges.

The different laws of Virginia respecting military land warrants, and rights under the royal proclamation, and the material parts of that proclamation, may be seen in 3 *Dallas* 425, to 466, in *Sim's lessee v. Irvine*, stated in the special verdict, in the circuit court, and decided in the supreme court of the United States, on an ejectment for *Montour's* island, in the Ohio river, founded on the right of major Douglas, located in May, 1780, and on which the plaintiff recovered against a patent granted to the defendant by act of September, 1783, and in which those rights, and the construction of the agreement between the two States, came fully to the view of the court. As the case could not be abstracted within a reasonable compass, without mutilating the facts, and being in print, it is here referred to generally. See the royal proclamation at large, dated 7th of October, 1763. Council books, S, p 427.

The controversy respecting boundary between the provinces of *Pennsylvania* and **Maryland*, was of early and long standing. It was not rendered less difficult and tedious, by the situation of the parties; and even after an agreement by the respective proprietaries to adjust their limits, nearly thirty years were passed in expensive litigation, before the controversy could be terminated. The history of this dispute and the records and papers respecting it, could not be brought within the compass of a note. They would of themselves form a considerable volume. Extracts are, however, here furnished, sufficient to give an understanding of the border titles. In any other point of view than as they affect the landed interest of the country, they have, from the lapse of time, and a settled boundary, become unimportant.

By the charter, Mr. Penn's grant was to be bounded on the north, by the beginning of the three and fortieth degree of northern latitude, and on the south by a circle drawn at twelve miles distance from *Newcastle* northward and westward, unto the beginning of the fortieth degree of northern latitude, and then by a straight line westward, &c.

The lord *Baltimore* insisted that the whole fortieth degree of north latitude,

was included in his charter, which was prior in point of time. Mr. Penn insisted that lord *Baltimore* was precluded by a recital in his charter, that the land was uncultivated and possessed by barbarians; whereas it was not so, but possessed by *Dutch* and *Sweedes*; and therefore the king was deceived in his grant. The early part of this controversy, especially respecting the three lower counties, now state of Delaware, may be seen in the beginning of the first volume of the votes of assembly. A principal difficulty was also made concerning the circle of twelve miles to be drawn about *New-Castle*, and the true situation of *Cape Henlopen*.

In order to bring this dispute, which had been then depending nearly fifty years, an agreement was entered into between Charles lord *Baltimore*, and John Penn, Thomas Penn and Richard Penn, Esquires, May 10th, 1732, which recited several matters as introductory to the stipulation between the parties, particularly the respective charters; and the title derived from James duke of York, to the three lower counties by two feoffments, dated 24th of August, 1682. That several controversies had been between the parties concerning the boundaries and limits of the two provinces, and three lower counties. They then make a particular provision for settling them by drawing part of a circle about the town of *New-Castle*, and a line to ascertain the boundaries, &c. and a provision in what manner that circle and line should be run and be drawn; commissioners were to be appointed for that purpose, who were to begin the work in the month of October following, and complete the same on or before the 25th of December, 1733.

In the eleventh section, a clause is inserted, quieting the occupiers and possessors of lands held under the respective proprietaries, on their attorning, and paying arrears of rent, duties, &c. to the said several proprietaries.

November 24th, 1733, the commissioners on both sides reported, that having used their endeavours towards the execution of the articles of agreement, they had respectively broken up, as they differed in running the circle from *New-Castle*; the *Pennsylvania* commissioners insisting that the circle should begin twelve English statute miles from *New-Castle*; and the *Maryland* commissioners insisting that the periphery of the circle to be run, should be twelve miles, whose diameter would be somewhat less than four miles from *New-Castle*.

Lord *Hardwicke* expressed great dis-

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**Maryland*.

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satisfaction with the conduct of the *Maryland* commissioners, and said they behaved with great chicane in the points they insisted on. 1 Vez, 455, *Penn v. lord Baltimore*.

May 25th, 1738, the royal order issued, founded on the agreement of the proprietaries of *Pennsylvania* and *Maryland*, before the committee of council.

It recites the first royal order made on the 18th of August, 1737, that "the respective governors should not make grants of any part of the lands in contest, nor permit any person to settle there, or even attempt to make a settlement, until his majesty's pleasure should be signified.

In the third section of the agreement previous to the royal order of 25th of May, 1738, there is this clause. "All lands in contest between the said proprietors now possessed, by, or under either of them, shall remain in possession as they now are, although beyond the temporary limits hereinafter mentioned. The respective jurisdictions to continue over such lands until the final boundaries shall be settled, and the tenants of either side not to attorn to each other, nor the respective proprietaries to accept of such attornments."

The king took the report of the committee of council into consideration, and approved of the agreement of the proprietaries, and by the advice of his privy council, ordered the same to be carried into execution.

In the year 1739, the temporary line was run between the two provinces.

A suit in chancery was depending for many years, upon a bill exhibited by the proprietaries of *Pennsylvania*, against lord *Baltimore*, to obtain a specific execution of the agreement of 1732, which agreement was decreed to be carried into effect in the year 1750, and after a bill of revivor and supplemental bill, the final agreement between the different proprietaries was executed on the 4th of July, 1760.

This agreement recites the original charters to lord *Baltimore* and *William Penn*, and the grants to and from the duke of York, for the three lower counties, and that very long litigations and contests had subsisted from 1683, down to the present time, and many orders in council had been pronounced relative thereto. The agreement of 10th of May, 1732, at full length. That the time being expired for completing the said articles, *Charles*, lord *Baltimore*, petitioned the king in council to confirm to him by another charter the Peninsula granted to *Cecilus*, lord *Baltimore*, on the 8th of August, 1734, which was opposed by a counter peti-

tion by *John*, *Thomas*, and *Richard Penn*, on the 19th of December, 1734, and upon references and report thereon, the king, on the 16th of May, 1735, ordered the consideration of the report to be adjourned, that Messrs. *Penn* might proceed in equity. That they petitioned Chancery on the 21st of June, 1735. It then recites the proceedings in Chancery, and the decree of the lord Chancellor at large, that the agreement of 1732, should be carried into specific execution. The appointment of commissioners in pursuance of the decree. The death of *Charles*, lord *Baltimore*, the proceedings in chancery, upon a bill of revivor, and supplemental bill, &c. And whereas the parties to these presents (*Frederick*, lord *Baltimore*, and *Thomas Penn*, and *Richard Penn*,) have come to an amicable agreement in manner as hereinafter mentioned. It then proceeds to describe and make provision for fixing the circle and running the line, &c. Then there is the following proviso, "That nothing therein contained shall extend to the right of any grantee, or those claiming under him to any of the farms or lands in the actual possession and occupation of any tenant or occupier which have been at any time and in any manner heretofore granted by or under the authority of the said *Frederick* lord *Baltimore*, or by or under the authority of any of the ancestors of him the said *Frederick* lord *Baltimore*; but that it shall and may be lawful to all, and for all and every such tenants and occupiers of the same premises, and every part thereof, their and every of their heirs, executors, administrators and assigns, from time to time, and at all times hereafter, to hold and enjoy the said farms, lands, tenements, and hereditaments, and every of them, and every part thereof, for and during all and every such, their several and respective estates, terms and interests in the same, and every of them, and every part thereof, subject nevertheless to and by, and under all and every the same quit rents, reservations and services, to be from henceforth paid, rendered and performed to the proprietaries of the said province of *Pennsylvania*, for the time being, as they the said tenants and occupiers and every of them were liable at the time of, and immediately before the execution of these presents, to have paid, rendered and performed to the proprietary of the said province of *Maryland*, any thing herein before contained, to the contrary in any wise notwithstanding."

Provided also, and it is hereby further declared and agreed, &c. That

neither these presents, nor any clause, article or thing whatsoever therein contained, shall extend or be deemed, construed or taken to extend to the right of any grantee or grantees, or those claiming under them, to any the farms, lands, tenements or hereditaments, situate, lying and being on the east side of the river Susquehanna, and within the space or distance of one quarter of a mile more south than the east and west line mentioned in the sixth article of the said articles of agreement, of the 10th of May, 1732, and which have been at any time, and in any manner heretofore granted by or under the authority of the proprietaries of the said province of Pennsylvania, for the time being, and are now in the actual possession or occupation of all, every, or any of the tenants or occupiers of the said province lands, hereditaments and premises, but that it shall and may be lawful to and for all and every such tenants and occupiers of the said last mentioned lands and premises, and every part thereof, their and every of their heirs, executors, administrators and assigns, from time to time, and at all times hereafter, to hold and enjoy their said farms, lands, tenements and hereditaments, and every of them, and every part thereof, for and during all and every their several and respective estates, terms and interests in the same, and every of them, and every part thereof, subject nevertheless to, by and under all and every the same quit rents, reservations and services to be from henceforth paid, rendered and performed to the proprietary of the said province of Maryland, for the time being, as they the said tenants and occupiers, and every of them, were liable at the time of, and immediately before the execution of these presents to have paid and rendered and performed to the proprietaries of the said province of Pennsylvania, any thing herein before contained to the contrary in anywise notwithstanding."

Mason and Dixon's line was run in the year 1767, and 1768, and the agreement and proceedings thereon were approved and ratified by the king, by his order in council, on the 11th day of January, 1769, and the proclamations of the respective proprietaries, to quiet the settlers &c. were issued in 1774, that of Pennsylvania, bears date the 15th of September, 1774: council Books, U, page 466.

The agreement of 1760, was inrolled in chancery, in *England*. The original is now deposited with the secretary of the commonwealth.

This original agreement was produced in evidence at *Bedford*, October, 1806, on the trial of *Ross'* lessee, v. *Cutshall*, reported in 1 *Binney*, 399, and admitted after argument, and decided to be proper evidence by the supreme court, on an appeal, because it was an ancient deed, ascertaining the boundaries of the then provinces of *Pennsylvania* and *Maryland*, and may be considered in the light of a *state paper*, well known to the courts of justice, and which had been admitted in evidence on former occasions.

The plaintiff claimed under a warrant of the 1st of February, 1760, from lord *Baltimore* to *David Ross*, "for 500 acres of vacant land, in *Frederick county, Maryland*, between *Little Meadow* and *Buck Lodge*, on *Potomac* river, above *Fort Cumberland*, partly cultivated. On the 30th of April 1762, a survey was made for *Ross*, the certificate of which stated that by virtue of a renewed warrant of 4th of February, 1762, 295 acres were surveyed, called the *Dry Level*, beginning at two white oaks, standing on the top of a hill, on the west side of *Will's* creek; but the survey said nothing of *Little Meadow* and *Buck Lodge*, or of its being partly cultivated; and it was said to be ten miles from the *Potomac*, and below *Fort Cumberland*; a Maryland patent to *Ross*, was dated in December, 1762.

The court said, the case depends upon the articles of agreement of 4th of July, 1760, between lord *Baltimore* and the *Penns.* By these articles, the estates of all persons were protected, who had, *before that time*, acquired title by any kind of grant from lord *Baltimore*, or his ancestors. The question then is, had lord *Baltimore* made a grant to *David Ross*, prior to 4th of July, 1760? *If the original warrant had called for the land afterwards surveyed*, we think that the title of *Ross*, would have related to the date of that warrant, although the survey was not made until some years after, provided the warrant had been renewed according to the practice of the Land-Office of *Maryland*. But supposing, as we do, that the warrant did not call for the land surveyed, the grant to *Ross* cannot be said to commence before the time of surveying it, viz. 30th of April, 1762, and is therefore a mere nullity. We can find nothing in the articles of agreement between the proprietaries, to establish a title of this kind, to land in this state, against a person, who, like the defendants, afterwards acquired a regular title from the proprietaries of *Pennsylvania*, (which, as appears by the report, commenced in August, 1766,)

1784. a new trial was therefore granted, on the point of fact, whether the land was called for by the original warrant of 1760.

In the lessee of *Thomas Lilly v. George Kitzmiller*, at York, May, 1791, before *Shippen* and *Neates*, Justices, (MSS. Reports,) the case was as follows.

The lessor of the plaintiff grounded his title on a *Maryland* patent for 6,822 acres, dated 11th of October, 1735, founded on an original warrant for 10,000 acres, dated 1st of April, 1732, which, according to the custom of the Land-Office of Maryland, had been several times renewed; also, on a *Maryland* warrant of re-survey, to re-survey the ancient metes and bounds, correct errors in the first survey, and add contiguous vacancies, whether cultivated or not, dated 15th of July, 1745. A survey thereon, of 3,679 acres, made in October, 1745, and a patent dated 18th of October, 1745.

He also relied on the two agreements of the proprietaries of *Maryland* and *Pennsylvania*, the first dated May 10th, 1732, under the 11th article whereof, "Persons holding lands under either of the proprietors, though beyond the division line of the two provinces, were secured and quieted in their rights and possessions," and the order in council made in pursuance thereof, on the 25th of May, 1738. And the second agreement on the 4th of July, 1760, under the proviso whereof, it was declared, that "nothing therein contained should be construed to extend to the respective grantees, or those claiming under them," and deduced his title to both patents, under a will, and divers mesne conveyances and descents.

The defendant's title rested on a warrant to *Martin Kitzmiller*, for 150 acres of land, including his improvements, from the Land-Office of *Pennsylvania*, dated 5th of February, 1747; a survey thereon of 164 acres, made 30th of May, 1759; a patent dated 17th of September, 1759; and a conveyance from the patentee to him. It was proved that the defendant and his ancestor, had been in possession of the lands in question since the year 1738, or 1739. It was admitted on both sides, that the temporary line between the two provinces, was run in 1739—the final division line run by *Mason* and *Dixon* was completed in 1767, and that the proclamations of the respective governors issued in 1774.

The instructions of lord *Baltimore* to *Charles Carroll*, his agent, dated 12th of September, 1712, were also given in evidence on the part of the defendant,

whereby the mode of assigning warrants was pointed out, and wherein he directs, that in each survey, the boundary tree alone should be marked, and the courses and distances specified in the return of survey, as the *fairest* mode, and best calculated to *prevent civil suits!*

With an intention to shew fraud or mistake in the deputy-surveyor, it was proved by an ancient witness, that the deputy surveyor did not return the first survey as actually made by him on the ground; that the quantity of 10,000 acres was really contained within the lines of the lands run by him, including the lands in question, and that upon making his plat, and finding the figure to be very irregular, he got displeased, and swore he would not cast up the contents, or return it in that form, and then reduced a number of lines into one, struck off five or six angles in different places, and made a new plat different from the courses and distances run on the land, and of 270 courses contained in the field notes, which were several years in witness's possession, he left out above one hundred and fifty of them; and the witness afterwards delivered the field notes to *John Digges*, the patentee.

The lands in possession of defendant were thus thrown out of the returned survey, but were included in the re-survey, which was said to have corresponded with the lines originally run upon the ground.

There was much other testimony, but not material to the point now under consideration.

The court in their charge to the jury, said, in substance, as follows.—The lands in dispute lie four miles north of the boundary line between the States of *Pennsylvania* and *Maryland*. Independent of the proprietaries' agreements, lord *Baltimore* could have no right to grant lands beyond the limits of his province. Whatever, however, was granted by either proprietor, though beyond their respective limits, before the royal order in 1738, was secured to the settlers by their mutual agreement; but the subsequent agreement of 1760, could not affect the rights of persons claiming under either proprietor, previous thereto. The great question in this cause is, whether the first survey included the lands now possessed by the defendant.

It appears to us there is a failure in the plaintiff's title in this early stage of it. Under the practice in *Pennsylvania*, of making proprietary surveys, trees are marked on the ground, and where there are no trees, or natural boundaries, artificial marks are set up to distinguish

the survey. By these means, if the surveyor returns a draught, different from the courses and distances actually run, the mistake is easily corrected. Should the surveyor commit an error in his return, it shall not affect the right of the party. Such cases have frequently happened.

But the case is very different under the ancient practice of making surveys under the proprietaries of Maryland. Such surveys were merely ideal, and precisely fixed on paper alone. No trees were marked, except the beginning boundary. Lord *Baltimore's* instructions, which have been read, clearly shew us, what his intentions were, and that he was concluded only by the courses and distances returned. The survey was ambulatory, not confined to a certain spot of land, but was governed by the variation of the compass, and was continually shifting. *The courses and distances returned formed the survey,*

and determined, on an exact admeasurement, the particular lands granted, as often as they were run. Those courses and distances alone were binding on the proprietor, and consequently on his patentee. It necessarily follows under our idea, that as the testimony of witnesses, or any other circumstances shewn in the cause, cannot establish a title to lands without the limits of the original survey *as returned*, that the plaintiff must fail in the present suit.

We mean, however, in thus giving our opinion, which we have taken some pains to form, to confine ourselves to the express case before us.—It is not intended to affect other rights.—Persons who have bought lands from plaintiff, even within the resurvey, may have acquired titles by their possessions and improvements, which should not now be shaken. The plaintiff suffered a non-suit.

PART II.

Of the ancient practice and customs of the Land-Office, previous to the year 1765.

By force of the royal charter, *William Penn*, and his successors, as proprietaries, were the undoubted lords of the soil. They stipulated, however, with the purchasers under them, to extinguish the aboriginal right of the natives. They alone had this power. No individual, without their authority could purchase of the Indians; and the people themselves, by legislative acts, recognized, and aided them to enforce, this important principle.

They had the unquestioned right to dispose of their lands in any manner they thought proper. But without settlement, a grant of an extensive territory would have been useless. If the condition of colonization had failed, the grant must have been resumed; and, if the disposition of the great founder had not been the most benevolent, a commanding necessity obliged him to encourage emigration and cultivation, and to part with his lands upon reasonable terms.

The officers of the Land-Office were his officers and agents. The commissioners of property were controlled by his regulations and authority; and it will appear, that from the acts of these proprietary agents, many rights to lands have sprung up from time to time, which have, not improperly, been termed, inchoate, irregular, imperfect, and equitable titles; founded, not only upon war-

rants, surveys and patents, but upon settlements, connived at, or acquiesced in, depending sometimes upon the situation of the proprietor's title, or the unsettled state of his family, upon the supposed circumstance of the Land-Office being shut, or encouragement given to settlers on or near controverted boundaries, and to promises.—Hence also custom and usage of the Land-Office from early times have vested interests, which have afterwards been confirmed by judicial decision, and recognized by laws. Thus in an instance which may be found in *Kyle v. White*, 1 Binney, 247, a promise made to a trespasser, to induce him to move off of the unpurchased Indian lands, by secretary *Peters*, was considered as entitling the trespasser to a preference after the purchase.

Whatever uniform plan of settling the country and conveying his lands, the first proprietor may have contemplated, or devised, it must very early have been found impracticable on experience. At present no regular system can be traced upon the public records. The terms of sale were changed from time to time; and as the affairs of the Land-Office were not familiar to the mass of the people, it is not to be wondered at, that the assembly, even in the year 1755, in an address to governor *Morris*, declare, "that the state and management of the Land-Office, is pretty much of a mystery." Votes of assembly, vol. 4, page 464.

1784.

Of First Purchasers, or Old Rights.

The original lists of first purchasers are recorded in the Land-Offices. The privileges to which these were entitled, with respect to city lots, and liberty lands, and the price paid by them, and the quit-rents to which they were subject, have been already stated. To these first purchasers, the conditions and concessions made in *England*, chiefly related. Wherever they desired to sit together, and their quantity amounted to five or ten thousand acres, they were to have their lot, or *township*, cast together, &c. and, in every one hundred thousand acres, the governor, or proprietor, reserved ten to himself, *by lot*, which shall lie but in one place. It has been already shewn, that this related merely to the original purchasers.

Many of these original rights were long out standing, and several not surveyed until after the revolution, and, probably, some few have been entirely abandoned. The subject is at this day intricate from a variety of causes. Many of the purchases appear to have been made upon speculation by persons who never came into the province; and transfers were made of parts or parcels of large warrants to different individuals. For these parcels separate warrants were again issued to survey the subdivisions to the under-purchasers. By such means, it has not unfrequently happened that a considerable surplus has been surveyed beyond the amount of the original purchase. By the accumulation of old rights, by purchase, in one person, it has also happened, that entire squares of city lots, as appurtenant, in early times have been granted to individuals, with large appropriations of liberty lands, and it became almost a science to trace out original titles. From such cause is to be attributed the singular appearance of the original minutes of property, which exhibit a record of transfers and mesne conveyances in abstract, and pedigrees, and even of intermarriages. It is not improbable, however, that, in some cases, these may be valuable documents at this day.

In the minutes of the Board of Property, August 15th, 1765, there is a special order respecting *old rights*. The preamble suggests that great quantities of lands on such rights had been again applied for, and twice granted, and, "The deputy surveyors are directed to send in to the surveyor-general's office, all the surveys on old rights which they can discover not to have been yet returned—And all future surveys thereon to be returned in two months after made."

By the seventh section of what has been termed the divesting act, ante. vol. 1, page 481, all rights, titles, estates, claims and demands, which were granted by, or derived from the proprietaries, their officers, or others, duly commissioned, authorized and appointed, or otherwise, or to which any person or persons, other than the said proprietaries, were, or are entitled, either in law or equity, by virtue of any deed, patent, *warrant*, or survey; or by virtue of any location filed in the Land-Office at any time or times before the 4th day of July, 1776, were ratified, confirmed and established forever, &c.

By the 5th section of the act in the text, persons possessed of old rights, &c. were confined in locating the same to the lands already purchased of the Indians.

Of Quit-rents.

All quit-rents were abolished by the ninth section of the divesting act before mentioned.—Any observations respecting them, therefore, can have no further interest than as they may be considered as a part of the history of the titles to lands as they stood under the proprietary government.

It does not appear that any certain standard or rule was established with respect to quit-rents at the first settlement of the province, except with the first purchasers, which was one shilling sterling for one hundred acres.—See votes of assembly, vol. 1, part 2, page 41.

Lands which were allotted to servants, who came over with the first settlers, and faithfully served out their time, were not liable to purchase money; the quit-rent was therefore greater. The seventh article of the conditions and concessions runs thus, "That for every fifty acres that shall be allotted to a servant, at the end of his service, his quit-rent shall be two shillings per annum; and the master, or owner of the servant, when he shall take up the other fifty acres, his quit-rent shall be four shillings by the year; or if the master of the servant, (by reason in the indentures he is so obliged to do,) allot out to the servant fifty acres in his own division, the said master shall have on demand allotted to him from the governor, the one hundred acres, at the chief rent of six shillings *per annum*."

When warrants were issued upon what were called the new terms, it appears by the minutes of the commissioners of property, the price was five pounds for one hundred acres, and the quit-rent sometimes a *bushel of wheat*,

sometimes *one shilling sterling*. This latter was called the common rent. The new rent, and the most usual, was one penny sterling per acre. Whatever reservation was made, was stated in the warrant, as part of the contract.

In the commission of October 28th, 1701, to *Edward Shippen, Griffith Owen, Thomas Story, and James Logan*, as commissioners of property; authority is given to them to grant lands for *such sums and quit rents, &c.* as to them, or any of them, should seem reasonable.

The same authority is given by the new commission of November 9th, 1710.

The assembly in their address to the proprietor, when he was about to sail for England, September 20th, 1701, request of him, "That the inhabitants, or possessors of land may have liberty to purchase off their quit rents, *as formerly promised*. Votes of assembly, vol. 1, part 1, p. 146.

In his answer, he tells them, "If it should be my lot to lose a *public support*, I must depend upon my rents for a supply; and therefore must not easily part with them; and many years are elapsed since I made that offer, *that was not accepted*. Ibid, 149.

Some controversy, indeed, there was about this *public support*; and the assembly alleged that quit-rents were originally agreed to be paid to the proprietor, on account of the extraordinary charge he would be at in the administration of the government. That he had sold lands to a great value, and reserved rents sufficient, in a moderate way, to maintain him or his lieutenant, answerable to their station. What if we add, say they, that we desire the proprietary would be content to live upon his rents, &c. Considerable altercation, and no little warmth took place upon this subject between govern. or *Evans* and the assembly. The dispute, however, died away. The assembly continued to provide for the governors down to the revolution. See votes of assembly, vol. 1, part. 2, p. 41, 45, 155; vol. 2, p. 10, 12, 15.

Of the six per cent. allowance.

The allowance was originally ten *per cent.* In the address of September 20th, 1701, before-mentioned, the assembly request "That the ten acres in the hundred, may be allowed *according to the proprietary's engagements*." I am very willing, answered the proprietor, to allow the ten acres *per cent.* for the ends proposed by law, and not otherwise.

The law referred to, was the law of

property, made shortly before at *New Castle*, with which the people were dissatisfied, and some misunderstanding had taken place respecting it. The assembly, therefore, on the 9th of October following, (1701,) again request "That the misunderstanding about the ten acres *per cent.* be rectified; and the allowance for roads and highways be allowed to all lands whatever, whether already taken up, or to be taken up hereafter." On the 23d of October, they sent a member to the governor, with the request, varied in this manner. "The assembly desires that the proprietary will be pleased to allow ten acres *per cent.* for roads, uneven grounds, &c. unto all persons, purchasers and renters, either taken up, or to take up; and for such as shall hereafter rent, *five per cent.* at least." The proprietor sent them the following message on the 25th.—"Friends, complaint having been made, that some persons had not the benefit of the law of *New Castle*, with respect to the allowances of *ten per cent.* I consented to allow the said ten acres *per cent.* according to the said law; but never intended to make myself debtor for those deficiencies which were not to be had; and understanding you look upon that law unequal, as giving to some *ten per cent.* where there is overplus, and but two *per cent.* upon surveyed land, where no more is to be found; I am therefore willing to allow or make good *six per cent.* to all persons, as well to those that want, as to those who do not want the same upon a re-survey." This did not meet the sentiments of the assembly; and the amendment proposed by them to the bill of property was, "That whereas *ten per cent.* is allowed by the law made at *New Castle*, for roads, barren lands, uneven grounds, and difference of surveys unto all such persons who have overplus in their tracts; the same *ten per cent.* may be allowed unto all persons whatsoever, who have taken up lands by right of purchase, or on rent, or that shall hereafter take up by virtue of former grants; and that all persons hereafter purchasing may have *five per cent.*"

By the act of 1712, chap. 183, it was provided "That for all lands hereafter to be taken up, or surveyed in this province, the surveyor, that lays out the same, shall allow for roads and barrens, after the rate of six acres for every hundred acres to the owner of such lands, for which said allowance of *six per cent.* no rent shall be paid to the proprietary, his heirs or assigns!"

This act was repealed by the queen

1784. in council, Feb'y 20th, 1713; but the custom was established, and continued from that time to this day.

See votes of assembly, vol. 1, part 1, p. 145, 148, 153, 161, 163, 164, and appendix, 14.

Of Townships.

It appears to have been part of the plan of William Penn to have laid out the province into townships, of 5000, or of 10,000 acres, and to have surveys made within the respective boundaries of such townships; and that purchasers of large tracts might lie together; he accordingly introduced this clause into his warrants, "According to the method of townships appointed by me." This plan could not be long pursued. The clause in the warrants, however, continued long after the object of it ceased. It was omitted in the warrants for the lands in the purchase of 1784, but was not discontinued in the preceding purchases, until it was struck out by the present Land-Officers, as having no present meaning, or utility.

Of Head Lands.

A township was appropriated under this name, and in which, as appears from the minute books, all the servants' lands were to be surveyed, so many acres *per head*, according to the conditions and concessions. This could be claimed only by such servants who came in with the first purchasers.

Of Manors.

Manor courts were never established in the province. The great troubles of William Penn in all probability, prevented his attention to this subject, which would perhaps have failed in the experiment, and might have been obnoxious to the people, and have introduced a state of vassallage, to which they could not long have submitted. That he kept it in view, appears from the following entry, in minute book, C, p. 6. "The proprietor gave to *Martin Zeal*, a paper wrote all in his own hand, and signed by him in the following words, (I am willing to let Elizabeth's husband have 50 acres in my manor of *Pennsbury*, on the other side of the run, near to the Shoemaker's, lying upon the said creek, and running back to *William Biles'* line, at three pence sterling per acre, to begin to be paid the third year, and so forever after, holding of the said manor, and under the regulations of the court thereof, when erected." Warrant ordered by the commissioners accordingly, (1701.)

Technically speaking, therefore, there were no manors in Pennsylvania, although the proprietary tenths, and other large surveys for them, were so called. The tenure by which the charter was held, was that species of feudal tenures called *Socage*, by fealty only, in lieu of all other services; and the tenures under William Penn were by a kind of rent service. The patents were in free common socage, in lieu of all other services. By the abolition of quit rents all estates derived immediately from the commonwealth, are unconditional fees simple, with a reservation only of a fifth part of gold and silver ores, at the pit's mouth. Happily for Pennsylvania, this reservation has been merely nominal, and the surest mines of wealth, are the virtue, industry and simplicity of the people. Every grant of land, however, under the proprietary government, was nominally declared in the patent to be held as of some certain manor.

In the eighth section of the divesting act, vol. 1, p. 481. In the reservation of the private estates of the proprietaries the manors are thus mentioned, "Likewise all the lands called and known by the name of the *proprietary tenths or manors*. It has already been shewn, in *Carson v. Bluzer*, before cited that the terms of the conditions and concessions, confining the tenths of the proprietaries to one place, and to be taken by lot, related only to the grants to the first purchasers. But the proprietor had the right to withdraw any land, not previously appropriated to individuals from the general mass of property, and to appropriate it to his own use. Such was the judicial construction, upon the Springettsbury manor case: See *Penn v. Kline*, 4 Dallas, 407.

William Penn issued his warrant, dated 1st of September, 1700, to *Edward Pennington*, then Surveyor-General, to survey for the proprietor 500 acres of every township of 5000 acres; and generally, the proprietary tenth of all lands laid out, and to be laid out; and similar warrants were issued by the successive proprietaries, to every succeeding Surveyor-General. Warrants were likewise issued for the appropriation of the islands in the different purchases.

All these special appropriations to proprietary use, are entered together, since the revolution, and are preserved in the Surveyor General's office.

Regulations of Settlement.

By the fourth section of the conces-

sions and conditions, any number of purchasers, whose number of acres amounted to five or ten thousand, desired to sit together in a lot, or township, their township was to be cast together, in such places as had convenient harbours, or navigable rivers attending them, if such could be found; and in case any one or more purchasers did not plant according to agreement in this concession, to the prejudice of others of the same township, upon complaint made to the governor, or his deputy, he might award (if he saw cause) that the complaining purchaser might, on paying the surveying, purchase money, and interest, be entitled to, and invested in the lands so not seated. And by the preceding article, purchasers from one to ten thousand acres, or more, were not to have above one thousand acres together, unless in every three years they planted a family upon every thousand acres: and by the tenth section, every man was bound to plant his lot within three years after it was set out and surveyed, otherwise it was to be lawful for new comers to be settled thereon, paying the survey money, and the first purchasers were to go higher up for their shares.

These regulations were certainly neglected, and the proprietor endeavoured to enforce it by proclamation, which still exists on the journals of the commissioners of property, 1687, letter F, in these words,

Proclamation concerning seating of land
by WILLIAM PENN, proprietor and governor.

"Since there was no other thing I had in my eye in the settlement of this province, next to the advancement of virtue, than the comfortable situation of the inhabitants therein; and for that end, with the advice and consent of the most eminent of the first purchasers, ordained that every township consisting of five thousand acres, should have ten families at the least, to the end that the province might not lie like a wilderness, as some others yet do, by vast vacant tracts of land, but be regularly improved, for the benefit of society, in help, trade, education, government, also roads, *travill*, entertainment, &c. and finding that this single constitution is that which eminently prefers the province in the esteem and thoughts of persons of great judgment, ability and quality, to embark with us, and second our beginning, I do hereby desire, and strictly order my trusty and loving friends and commissioners, William Markham, Thomas

Ellis, and John Goodson, or any two of them, that they inspect what tracts of land taken up, lie vacant and unseated, and are most likely to give cause of exception and discouragement to those that are able and ready to seat the same, and that they dispose of, *if not seated by the present pretenders* within six months after the publication hereof, provided always, the usual time allowed for plantations, be already expired; and that this extends not to those persons that have forfeited their lands in the annexed counties, (the three lower counties,) to whom I allowed a year and an half time, after my arrival, to settle at the old rent, and have nevertheless neglected to do the same; and that the said commissioners are further desired and required to take the greatest care, that justice and impartiality be observed towards all in the disposal of land, as well in reference to quality as quantity, that what is right in the sight of God and good men, may always be preferred, for it is the best and lastingest bottom to act and build upon."

Given at *Worminghurst* place, in old England, the 24th of the 11th month, 1686.

This proclamation was published in the province the 26th of the 5th month, 1687.

These proceedings, however, appear, to have had no operation, nor does any record appear of any forfeiture, or regrant of any of the lands surveyed on the original rights. The province continued to increase and prosper, and applications for new lands were almost daily made; the *method of townships* was very soon lost sight of, and surveys promiscuously made according to the wishes of the purchasers. The warrants in 1701, express "That the land shall be seated within two years after the survey *Vacating* warrants will be hereafter considered.

Of resurveys, and surplus lands.

This subject engaged much of the attention of the first proprietor; he was desirous to be just, but he was tenacious of his rights. There was at the date of his charter, a very considerable settlement on the banks of the Delaware, and the titles were generally derived from the governors of New-York, under the crown. The inhabitants were quieted in these titles; and instances occur of grants from sir Edmund Andross, which had not been surveyed, being ratified, surveyed and patented by order of the commissioners of property. But it was

1784. supposed that these old rights included a large quantity of land more than was expressed in the patent, or the possessor had any right to by the original warrants, or orders for the surveying or laying out the same. Large quantities of surplus lands were also supposed to have been included within the patents issued from his own office. A method was therefore adopted of issuing warrants of re-survey, and after cutting off the overplus, confirming the quantity first purchased, by a new patent. The practice, however, eventually failed. It may have been possible that in some cases too much land was fraudulently included; but in most instances it may have happened through mistake, or want of skill in the surveyors. Experience has proved that surveys made in early days, especially in a new country, have most generally overrun the measure, upon a re-survey. The system must therefore have become impracticable, and was discontinued after the year 1713. The proceedings are however here given, as part of the ancient land history of the country.

The following instructions were given by *William Penn*, on the first of the 2d month, called February, 1686, to his commissioners.

"That no warrant of re-survey be granted by you for land within five miles of the river Delaware, or any navigable river."

"That all overplus lands, upon re-surveys, granted by the former commissioners, not already granted finally, or not patented, be reserved to my use and disposal."

"No lands to be laid out next or adjoining to that inhabited, and that in every township one share be reserved for the proprietary, with all the Indian fields that are in the said township."

"No land containing mines, to be granted without *William Penn's* express warrant. Book F.

In the commission of October 28th, 1701, when the proprietor was about to sail for England, (book G.) among other things, he authorizes the commissioners of property, "To grant lands for such sums, and quit-rents, &c. as to them, or any three of them should seem just and reasonable; also, to sell intervening, concealed, or vacant lands; to dispose of surplus lands; and to make satisfaction out of my other lands and estate, (my appropriated land excepted,) in the said province and territories, as the law in that case directs, for all such deficiencies in measure, as upon a due re-survey shall be found in any tract or tracts, or parcels of land, to the respective persons thereby grieved, &c. And while on ship board, on the first of November, by a second com-

mission, he gives them power to erect manors, with jurisdiction thereto annexed, as fully as he could do by the charter. This latter power, however, they declined exercising, on the application for such a manor in Buck's county by Mr. *Gowdon*.

The law alluded to, was the law of property, passed at *New Castle*, in 1700, and confirmed in 1701; which enacted (among other things,) "That any person's lands in this province should be re-surveyed; and if upon such re-survey (after allowance of four acres in the hundred, over or under, for difference of surveys, and six per cent. for roads,) an overplus shall be found, the possessor thereof should have the refusal of it from the proprietary, at reasonable rates; and in case of disagreement about such rates, the proprietary was to choose two men, and the possessor two more, who should either fix a price on the said overplus land, or appoint where it should be taken off for the proprietary in one entire piece at an outside (saving to the purchaser or renter, his improvements and best conveniences,) any three of whom agreeing, should be conclusive; and the charges of re-surveying should be borne by the purchaser, or renter of the main tract, if he bought the overplus, or if not, then by the proprietary; and that deficiencies should be made good by the proprietary, according as he received for overplus land as aforesaid."

Under this act many re-surveys were made, and over measure found; but the act expired before the same could be cut off, or the rates settled; and the proprietary was not satisfied for his over-measure; in consequence of which the act of 1712, entitled "An act confirming patents and grants," (chap. 183, and *Carey's* and *Bioren's* appendix,) was passed.

This act confirmed all lands which any person or persons held and enjoyed, or ought to have, hold, and enjoy within the province, as well by or under any old grant or estate from the proprietor, or his commissioners of property and agents, pursuant to such person's right, &c. as also by, or under, any old grant, patent or warrant obtained from governors or lawful commissioners under the crown of England, before the charter to the proprietary, or by any other legal, or equitable grant, right, title, entry, possession, or estate whatsoever; but it was not to be construed or adjudged to confirm any lands taken up by virtue of the said old grants, which were not duly seated or improved by the grantees, or their assigns before the year 1682, nor for any more, or greater quantity, than should appear by any grant from the proprietary, or from his predecessors, the former governors aforesaid, to be the grantee's just due (over and above the six acres by the said proprietary allowed to be added to every hundred acres of

land for roads and barrens, and the four acres, over or under, to be accounted for difference of surveys;) nor to create a right to the possessor or claimer of lands, that were not taken up, or surveyed by virtue of a warrant, or order, from persons empowered to grant the same, and by a surveyor appointed for that purpose.

The Roll's office was declared to be an office of record; and all patents to be matters of record, and to have no need of delivery before witnesses, live-ry and seizin, or acknowledgments, as deeds of other persons. No patents to be prejudiced by mis-recitals, or for mis-naming, or not true naming counties, or places where the lands were situated, &c. But nothing therein contained, obliged the proprietary to make good any patent annihilated, or made void by due course of law; or to make good to any purchaser of a right, or rights to unlocated lands, who inadvertently, or by misinformation, had obtained, or should obtain a patent or confirmation of lands which should be discovered to be the prior right of another person, further or any more, than the same quantity of land in the next advantageous place that such purchaser should choose and discover to be vacant and free from all other claims. But where such prior right should appear and take effect against any such person or persons, who had purchased the same tract, or parcel of land of the proprietary, or his commissioners, or agents, by a certain name, or by any agreed location in that particular place, or the warrant expressing the same accordingly, then, and in such case, the proprietary, his heirs and executors, should refund and make good to such second purchaser the full sum or value, which he the said proprietary, or his agents, did receive for the same, together with lawful interest, from the time such payment was made; and in both the above mentioned cases, if the latter purchaser, his heirs or assigns, shall have made any improvements on the said land, such improvements were to be valued by persons indifferently chosen, and paid for by the first purchaser.

And as several persons had obtained grants or patents before the date of the charter, for more lands than they had any right to by their original warrants, or orders for the surveying, or laying out the same, they were not to be confirmed, but as to the residue or overplus of said lands, were declared to be null and void, and of none effect; and new patents were to issue for the quantity they were entitled to.

The act then proceeded with respect to the re-surveys which had been made under the act of 1700, and the overplus

was to be offered to the possessors at reasonable rates, to be fixed, in case of disagreement, by referees, who were to fix the price, or appoint where it should be taken off for the proprietary, in one entire and convenient piece, at an end or outside, saving to the possessor his improvements and best conveniences, and the residue was to be confirmed to the owner by a new patent, and the overplus be disposed of by the proprietor.

If upon any such re-surveys any tract had been found deficient in the number of acres for which it was at first granted, all such deficiencies were to be made good by the proprietary, after the same rate he received for overplus lands in that neighbourhood.

This act was repealed in council, 20th of February, 1713. Votes of assembly, vol. 2, p. 150.

The resuming surplus lands, and allowing for deficiencies, appear by this act to have been mutual stipulations between the proprietary, and the people. We find nothing more, however, upon record, respecting re-surveys, after this period. With respect to the allowance for deficiencies, the instances in the proprietary times are numerous; and it appears to have been a principle, to allow a credit for over payments, upon the most equitable of all rules, that no man should be compelled to pay for that which he could not obtain, or where the consideration had failed. With respect to laying warrants, or locations on other advantageous places, not at first contemplated, or what is called *shifted* warrants; that subject will be considered in its proper place, in this note.

Miscellaneous Facts.

Edward Pennington, the second Surveyor-General of the province, died on the 10th of January, 1701.—Thereupon,

The commissioners of property, resolved, That no such officer should be appointed till the pleasure of the proprietor be known.

That the said office with all the books, records, warrants, and papers belonging thereto, shall be taken into the commissioners' hands, and remain under their care, and that the secretary shall chiefly superintend the same, with an able and fit hand, well skilled in surveying.

That Jacob Taylor, now concerned in a school at Abingdon, be invited to take the management of said office under the secretary.

All warrants to be directed to the several surveyors of the respective counties, to be returned into the surveyor's office, at Philadelphia.

That only copies of the warrants shall be sent into the country, attested by the secretary, and the original remain in the

1784. office as before, and be entered on the books, and every original warrant shall express that the original shall remain in the surveyor's office, in *Philadelphia* Book C, p. 64.

The proprietor had mortgaged the province, by deeds of lease and release, dated the 6th and 7th of October, 1708, to *Henry Gouldney*, *Joshua Gee*, *Sylvanus Grove*, *John Woods*, *Thomas Callowhill*, *Thomas Oade*, and *Jeffery Pinnel*, with power to sell, &c.

On the ninth of November, 1711, *William Penn* executed a commission to *Edward Shippen*, *Samuel Carpenter*, *Richard Hill*, *Isaac Norris*, and *James Logan*, as commissioners of property, with the same powers, and in the same terms, as the commission of October, 1701.

The mortgagees, by deed, dated November 10th, 1711, empower the same commissioners to collect rents, grant and confirm lands, &c. (Book H.)

There was no Surveyor-General from the 10th of January, 1701, until the beginning of March, 1706-7, when *Jacob Taylor* was appointed, who continued until *Benjamin Eastburne* was appointed, on or about the 29th of October, 1733, who continued until 1741. *William Parson's* commission, as Surveyor-General, bears date, August 22d, 1741. His successor, *Nicholas Scull*, was appointed in the beginning of 1748. *John Lukens*, who succeeded him, was appointed in December 1761, and continued, by re-appointment under the commonwealth, until his death, in 1789.

Daniel Brodhead was appointed 3d of November, 1789, and continued by re-appointments until 23d of April, 1800.

Samuel Cochran, was appointed 23d of April, 1800.

Andrew Porter was appointed April 4th, 1809.

A tract of land, called the *Welsh tract*, containing forty thousand acres, was surveyed by virtue of a warrant, dated, March 13th, 1684. The object of it was to accommodate the settlers, who came from *Wales*, and desired to be seated together. It appears, however, from the early records, that they were not numerous enough to occupy the whole of it; but they applied to the commissioners of property for liberty to appropriate it all; but the commissioners insisted on interest and quit-rents from the date of the warrant, which they did not accede to. The unsettled part of it was therefore left open to other purchasers, and many warrants were afterwards issued to survey lands within its bounds.

There was no uniform frame of warrants in early times. Previous to the year 1733, they contained this clause, "*If not seated by the Indians*;" but in the warrants issued by *Thomas Penn*, this clause was omitted.

In the warrants issued by *Thomas Penn*, especially for lands within manors, an entire new clause appears to have been introduced: viz. "to pay a year's rent at every alienation;" but in those rights which were taken out at fifteen pounds ten shillings for one hundred acres, this clause was omitted.

In many warrants it is expressed that the warrantee should forthwith fulfil the terms, or the warrant to be void; but most generally, it runs thus, "That the purchaser should comply with the terms within six months, or the warrant should be void." And in the earliest times, interest is made to commence from the time of any settlement, or improvement.

The terms of sale were equally irregular and uncertain. As the commissioners had authority to grant lands, for such sums and quit-rents, as to them, or any three of them, should seem just and reasonable; so there was no uniform system before the year 1732. Not only the prices, but the quit-rents were various. The warrants sometimes expressed the terms of the contract; but very frequently did not. In many cases the quit-rents to be paid are inserted in the warrants, without purchase money; and from the variety, and amount of quit-rents in several cases, it would appear as if the grant had been without purchase money. Before the year 1713, five pounds a hundred acres, and a bushel of wheat, more frequently one shilling sterling, quit rent, were the common terms, and called new terms. In 1713, lands were granted at seven pounds, ten pounds, and fifteen pounds a hundred acres, and the common quit-rent of one shilling sterling. From 1712 to 1715, lands at *Oley*, and at *Conestogoe*, were granted at ten pounds a hundred; but the quit-rents varied; in some cases one shilling sterling a hundred acres; in others, a half-penny, and a penny sterling, an acre. In 1730, lands at *Oley* are charged at fifteen pounds a hundred acres; and in some scattered cases, appearing in the records, the price was still higher. No connected view can therefore be given of the customs of the Land-Office in this respect previous to the year 1732. From that time a system begins to appear; and the fixed price was fifteen pounds ten shillings a hundred acres, and one half-penny sterling an acre, quit-rent, which continued until 1765, excepting a variation about, and between the years 1761 and 1763, when warrants were issued at nine pounds a hundred acres; but the quit-rent was increased to one penny sterling an acre. In the warrants issued under the authority of the trust-

tees of the province, after the year 1719. the terms were, most commonly ten pounds, and one shilling quit rent, for one hundred acres; and then the warrants are for the first time expressed to be under the less seal of the province, which was continued afterwards, and the reservation is, (varying the expressions) "for the use of the trustees of the province" or "for the use of the proprietary trustees."

It has generally been supposed, that the land office was closed from the year 1718, when William Penn died, until the arrival of Thomas Penn in the year 1732. With respect to the lands on the east side of Susquehanna, this needs some observations. Warrants appear to have been issued during the whole time, almost without interruption, and in very great numbers. In May 1719 warrants began to issue for taking up lands, under the less seal, paying, as before stated, "to the use of the trustees of the province." As to the proprietaryship, it is well known, it was some time in controversy, and the will of William Penn was finally established, and the right declared to be in the younger branch of his family. It is true, that from 1720 to 1730, the warrants were generally to survey old rights, and city lots; but there are some new warrants between those periods, and the warrant for lands at *Oley*, above mentioned, at the price of fifteen pounds a hundred, was issued in 1730. But on the west side of the Susquehanna the lands were not then purchased, and no other right to them was vested in the proprietaries, except so far as *Hongan's* deed, subsequently confirmed, as we have seen, may have been supposed to have given a right to the lands on both sides of Susquehanna, to an indefinite extent. But the terms of the confirming deed of 1709, for the lands on both sides of the river, are "*next adjoining to the same*;" and the lands were not clearly purchased until 1736. However this may be considered, we nevertheless find from the records, that *Sir William Keith*, in 1722, with consent of the Indians, as it is said, had a survey made for himself on the west side of the river; which survey is recognized in, and is one of the boundaries of, the first survey of the Springetbury manor; the warrant for which issued on the 18th of June 1722, and recites it to be the request of the Indians, that a large tract of land, right over against their towns on Susquehanna, might be surveyed for the proprietor's use only, &c. The warrant of re-survey, of May 21st, 1762, recites, among other things, that sundry Germans and others, afterwards seated themselves by leave of the proprietors,

on divers parts of the said manor, but confirmation of their titles was delayed, on account of the Indian claim—and that after the purchase of 1736, licences were given to them, (*called Blunston's Licences*) the whole granted to be about 12,000 acres. The whole of this transaction may be seen in 4 Dallas, 402, to 410: (*Penn's lessee and Kline*,) in the report of which, it is said, that the original warrant and survey could now be returned into the land-office at that time, "*because the land-office continued since from the death of William Penn in 1718, until the arrival of T. Penn, in 1732.*" The report also states, that Thomas Penn, having purchased the Indian claim to the land, empowered Samuel Blunston to grant licences for 12,000 acres, to satisfy the rights of the settlers, &c. These licences, or rather promises to the settlers to grant them patents for the lands they had settled, are signed by Thomas Penn himself, when at Lancaster, October 30th, 1736.

It may be suggested, that there were other reasons why the survey was not returned into the land-office, at that, or any other time. (Unimportant indeed as to the title, after its recognition, and warrant of re-survey in 1762.) The warrant itself was not issued from the land-office, but under the private seal of governor *Keith*, at Conestogoe. The land had not been purchased from the Indians; the office was not open for the sale of them; and it was out of the usual course to grant warrants for unpurchased lands. The council, on the report of the proceedings, seemed cautious about it, and refused to interfere, further than to permit the warrant, and return of survey to be entered on their minutes; although Col. French defended the proceedings, because the facts and circumstances recited in the warrant were truly stated, "and, in his opinion, *Springet Penn*, in whose name the warrant issued, was the late proprietor's heir at law; and whatever turn the affairs of that family might take, to re-settle the property and dominion of the province, he did not conceive this measure would be interpreted, or deemed to the prejudice of a family, for whose service it was so plainly meant and intended."

But although the land was out of the purchases, as the Indians consented to the survey, the measure itself cannot but be considered as having been founded on the soundest and wisest policy, and *Sir William Keith* conducted himself with great zeal for the proprietary interest. The controversy with Maryland, with respect to the provincial boundaries was at its height, and the Marylanders were surveying their warrants, and

1784. pushing their settlements along the Susquehanna, and within a short distance from the present town of York, with rapidity. At the treaty, therefore, on the 15th of June 1722, the governor consulted the natives about making this survey; he told them, that when the land should be marked with the proprietary's name upon the trees, it would keep off the Marylanders, and every other person whatsoever from coming to settle near them to disturb them.

We have considered, say they, of what the governor proposed to us yesterday, and think it a matter of very great importance to us to hinder the Marylanders from settling, or taking up lands so near us on Susquehanna. We very much approve what the governor spoke, and like his counsel to us very well. But we are not willing to discourse particularly on the business of land, lest the *Five Nations* may reproach or blame us.

They then asked the governor, whereabouts, and what quantity of land he proposed to survey for Mr. Penn; who answered,—“from over against the mouth of Conestogoe creek, up to the governor's new settlement, (Sir William's own survey) and so far back from the river as no person can come to annoy or disturb them in their towns on this side.”

They then desired the governor would immediately cause the surveyor to come and lay out the land for William Penn's grandson:—The warrant was thereupon issued, and the survey made.

Information of these proceedings was immediately sent by express from governor Keith, to the governor of Maryland.

In order to counteract the Maryland incroachments, it appears further to have been the policy of the proprietary agents to invite and encourage settlements on the borders; and such settlements were made within the manor of Springettsbury. A certain right was acquired, and a contract existed, that the title should be made to such settlers, when the purchase from the Indians should be made. Certificates or licences were accordingly issued, as we have seen, promising patents upon the usual terms other lands in that country were sold for—and this contract was afterwards faithfully complied with. The year following the arrival of Thomas Penn, this system of settlement was recognized and pursued by him. The settlements increased; but titles could not be acquired; nor could the land-office be opened for lands on the west side of Susquehanna, as it had not been purchased of the Indians. Thomas Penn, therefore, departed from the practice of his great ancestor. The complaints of the Indians against the

settlements at Tulpehocken and the purchase of those lands in 1732 should have been a sufficient caution against settling the lands over the river, if some overruling necessity had not existed; and what that necessity was, we have seen. The Indians seem to have acquiesced, and *Dongan's* deed had been brought before them at every treaty.

A commission was issued to Samuel Blunston, on the 11th of January 1733-4, to grant licences to settle and take up lands on the west side of Susquehanna. Not because the land office was at that time closed, as has been generally conceived, but because the office *could not be opened* for those lands, which were not yet purchased of the Indians.

The first licence issued by Samuel Blunston was dated on the 24th of January 1733-4, and the last on the 31st of October 1737, all of which, (and they were numerous,) prior to the 11th of October 1736, were for lands out of the Indian purchases. These grants the proprietors were bound to confirm, being issued by their express consent, as soon as they purchased the lands from the natives, upon the clearest legal principles, as expressed in the case of *Weiser's* lessee and *Moody*, before cited.

Here then appears a distinct species of land titles; local in their nature, and different from all the former practice of the province. They were not like the locations or applications of later times, but grants of a higher nature. In *Culhoun's* Lessee v. *Dunning*, 4 Dallas, 120, the court say, that Blunston's licences have always been deemed valid, and many titles in Pennsylvania depend on them; and in the lessee of *Dunning* and others v. *Carothers*, in the supreme court, December 1803. *Miss. Reports*, The court say, “That Blunston's licences partake more of warrants than locations, and have all the essential parts of a warrant.

We have already seen, that the promise of Richard Peters, to give a preference to a settler to induce him to remove from unpurchased Indian lands has been recognized. We will now proceed to exhibit other instances of recognition of titles irregularly commenced.

In the lessee of *Fothergill v. Stover*, 1 Dallas, 6, a letter from James Steel, receiver-general and secretary of the land-office, to the surveyor-general's deputy in Chester county, in these words. “Friend Isaac Taylor, Philadelphia, 3, 2d mo. 1719. James Logan has agreed, that the bearer hereof, William Willis, shall have 500 acres of land at Conestogoe, please to survey it to him, and the warrant shall be ready. Thy loving friend James Steel” was offered in evidence as the foundation of the defend-

ant's title. Objected on the part of the plaintiff, that James Steel, by his order only, without a warrant from the proprietors, or the commissioners of property, could not authorize the location of lands; and even supposing it to amount to an order from *James Logan* himself, as he was only one of *three* commissioners, such order cannot be a sufficient warrant.

But the court said, that under these sort of orders from the proprietors' officers, a great part of the province had been settled, and that for the general convenience they had been heretofore allowed to be given in evidence, and particularly in *McDowall's* case. In that case, last April term, a letter from *Richard Peters*, secretary of the land-office, to the same effect as the above, was allowed; and the letter in this case was accordingly ruled to be given in evidence.

A plot of a survey made in pursuance of the above letter, in *Isaac Taylor's* own hand writing, with a note at the bottom, thus "Surveyed in 1720," and in the body of it the words "William Willis, 400, as" not returned into the surveyor-general's, or secretary's office, but found among *Isaac Taylor's* land papers, many years after his death, was allowed to be given in evidence against a regular warrant and survey posterior to the above; a settlement and possession being proved to have been made, and the land-office appearing to have been shut between the years 1718 and 1732. Supreme court, April term, 1763.—And judgment affirmed, on appeal to the king and council.

It appears also, upon examination, that the practice was very common of permitting surveys to be made without any warrant, or order, either by connivance of the officers, or consent of the proprietor, expressed in some manner, not of record. This gave rise to a new kind of warrant, since rendered common in a different sort of inceptive right, called a *warrant of acceptance*. In the years 1760 and 1761, this warrant was frequently issued in the following form. "Whereas, by our consent and direction a survey was made, &c." and then requiring the survey to be accepted.

About the year 1762, when William Peters was secretary, another practice was resorted to, of a very inconvenient kind, and leading to much irregularity; which was, to issue certificates of warrants having issued, when in fact no warrant was issued, or any purchase money paid; and on these certificates surveys were made without any authority or direction from the surveyor-general. But after the year 1765 this practice was prohibited by special instructions to the deputy surveyors. These certificates were in the following form.

September 10th, 1762. I do hereby certify, that a warrant of this date is issued to *A. B.* for 150 as. of land, &c. on common terms of 1.15 10 per hundred acres, and a half penny sterling per acre, forever. Interest and quit rent to commence from, &c. *W. Peters.*

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This also required warrants of acceptance in order to confirm the proceedings, and these warrants of acceptance contained a suggestion, that the original warrant *could not be found*—and are in this form: "Whereas it appears by the book of entries of warrants kept in our land-office, that on the 10th day of September 1762, a warrant was issued to *A. B.* for 150 acres of land, &c. And whereas the said *A. B.* hath now represented to us, that he hath procured a survey of 218 acres upon the said warrant, but the said warrant not being now to be found, the said *A. B.* hath humbly besought us to grant him our warrant of acceptance, &c.—Of this practice there are many instances about this time.

It would be very material to ascertain the exact state of the land-office at every period of the provincial government; but from what has been shewn, it must be seen that it is impracticable to delineate any uniform, or regular system. None such existed. A knowledge of the customs and usages must therefore be derived from instances and facts scattered through its records. A variety of these have been already shewn; and the proprietors appear to have recognized the acts of their officers and agents, however irregular, with respect to the lands within the purchases. These acts, practices or customs, grew into rights, and have been considered as contracts, which the law would have enforced against the proprietor; and they have succeeded in courts against younger rights, however regular, as in *Fothergill* and *Stover*. So in the years 1719 and 1720, we find warrants issuing on settlements, said to have been made upon agreements previously made; a distinct matter from the *surveys by consent*, or the *certificates* before mentioned—Numerous warrants therefore run thus: "Whereas in pursuance of an agreement made by us about five years ago to settle and improve (certain lands) you are required to survey, &c." But no evidence of such original agreements exists. If reduced to writing, it must have been delivered to the party obtaining the licence, and not entered in the minute books. But it clearly appears, upon a very minute examination, that there was *no time* when the *land-office* can be said to have been *shut*, or when warrants could not be procured. The examination has been laboriously made with a view to ascertain the correctness

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of a circumstance stated in *Fothergill* and *Storer*, and *Penn* and *Kline*, and very frequently mentioned in the courts in the present times, that the *land-office* was closed from 1718 to 1732, during the minority of *William Penn's* children. It has been one of the causes assigned for the origin of improvement rights, which must be traced to a higher source, the *implied consent* and *acquiescence* of the proprietors and their agents, notwithstanding some of their public acts seem to discountenance them; and which will be related by and by.

In *Fothergill v. Storer*, when the receiver-general writes to the deputy-surveyor of Chester county to make a survey, he at the same time tells him that "*the warrant shall be ready*," which could not be, if the land-office was shut, and the powers of the commissioners of property suspended. It has been already shewn, that, independent of promises, licences to settle, and licence to make surveys, without warrants, a very great number of warrants issued in the usual form, changing only the clause of "paying to our use" to "paying to the use of the trustees of the province," in regular succession, from 1718 to 1732.

But it is equally certain that none of the warrants thus issued, were transmitted, as usual, to the surveyor-general's office, nor were they entered there at any subsequent time. To give a single instance. A warrant issued to one *Peter Bartolet*, for land at *Oley*, on the 20th of March 1720. But this warrant is not to be found in the surveyor-general's office. But although not deposited there, when it came to be patented, on the 29th of June 1736, it is recognized, and the surveyor-general makes his return to the secretary, in the usual manner, thus. "Pennsylvania, ss. By virtue of a warrant from the proprietary's late commissioners of property, dated 25th of March 1720, surveyed to *Peter Bartolet* on the 29th of same month, a tract of land situate in *Oley*, in the county of Philadelphia, beginning, &c. containing 150 acres, returned into the secretary's office, 29th of June 1736. Further, on examination of the receiver-general's books, from 1718 to 1732, monies appear to have been received for lands, and accounts settled, during the whole period, without interruption. Again, on examining the patent books, for the same period, it appears that an immense number of patents issued. For all these patents which were for old rights, and surveys made before 1718, and on some warrants of re-survey, and for city lots, the surveyor-general makes his returns to the secretary, in the usual manner. But for patents which issued during that period, on *new rights*,

granted during the minority of the proprietors, no returns are made by him for patenting in the accustomed manner, nor does any record exist of them in his office. It remains to account for this departure from practice; and it will appear, that, although the office of surveyor-general continued, and surveys were made by his deputies as usual, yet for all other purposes (making returns of surveys already in his office excepted) his usual duties, and general powers were suspended. And although no difficulty existed as to obtaining and confirming titles, through a certain channel, yet as the old practice of his office was interrupted, the idea must have arisen, that the *land-office* was closed, when in fact one branch of it only, partially ceased to act. To all substantial purposes it remained open. And if we descend to a very nice distinction, and say, that all *proprietary* authority ceased with the death of *William Penn*, and could not be revived, *as such*, during the minority of his successors, yet a power remained behind, unextinguished, which answered all useful and beneficial purposes; and whether the public business was conducted by trustees, or agents, yet if it was efficiently done, it was the same to the people. A few more observations, therefore, will close this point.

William Penn, by his will, dated in 1712, appointed certain trustees, and devised to them all his lands, &c. in America, upon trust to sell and dispose of so much of his said lands as should be sufficient to pay all his just debts. Supposing this will could operate only on his private estate, which was excepted out of the Pennsylvania mortgage; or, that no power could be immediately derived from it, during the litigation respecting the will, which was established in the court of exchequer in July 1727, and not before;—yet it must be remembered, that the legal estate of the province was not in *William Penn*, at the time of his death, but in the mortgagees; and it will also be remembered, that when *William Penn* executed a commission to certain persons, in 1711, to be his commissioners of property, it was necessary for the mortgagees to execute a similar commission, which was done on the following day; and power was given by them to grant the lands of the province and receive the monies for the purpose of extinguishing the debt. This mortgage was unsatisfied, and *Richard Hill*, *Isaac Norris*, *Samuel Preston*, and *James Logan*, the commissioners of property appointed in 1711, still survived, and were also the trustees of *William Penn's* will. They therefore granted warrants and issued patents; if not as proprietors

officers, yet under ample and existing powers. But the mode was varied. When surveys were made, if a patent was required, they took the first return of survey, without requiring it to be entered in the surveyor-general's office, and a formal return transmitted from thence. The patents were in their own names, and recited as well the commission of William Penn, as of the mortgagees, Joshua Gee, and others, of 1711, and thus very many patents exist, a trace of which cannot be found in the surveyor-general's office.

It becomes necessary now, to notice another mode of selling lands in the province, which was adopted in the year 1735, by lottery; the scheme of which was published on the 12th of July, in that year, and was as follows.

Scheme of a lottery for one hundred thousand acres of land in the province of Pennsylvania.

The honourable the proprietaries of the province of Pennsylvania, having considered a proposal made to them for the sale of one hundred thousand acres of land, by way of lottery, and finding that the same tends to cultivate and improve the lands, and consequently increase the trade and riches of this province; and also considering that many families are, through inadvertency, settled on lands to which they have no right, but by becoming adventurers in such a lottery may have an opportunity of securing those lands and settlements at an easy rate, to themselves and their posterity; have therefore agreed,

Prizes.	Acres.	
1	3000	
2 of 1500 acres	3000	
10 of 1000	10,000	
20 of 500	10,000	
140 of 200	28,000	
150 of 100	15,000	
250 of 50	12,500	
720 of 25	18,000	
Benefits 1,293	99,500	
Blanks 6,457	200 first } drawn	{ besides any other prize that may be drawn against them.
	300 last }	
Tickets 7,750	100,000	

5. That the number of acres the adventurers shall be entitled to, may be laid out any where within the province, except on manors, lands already surveyed, or agreed for with the proprietors or their agents, or that have been actually settled or improved before the date of these proposals; provided nevertheless, that such persons who are settled on lands without warrants for the same, and that may be entitled to prizes, either by

1. To sell by way of lottery 100,000 acres of land, and estimate the same at the settled price of fifteen pounds ten shillings, current money of this province, for one hundred acres, which amounts unto the sum of 115,500.

and that the same be purchased by the sale of 7,750 tickets, at forty shillings each, which likewise amounts to 15,500

2. That whereas a quit rent of one half penny sterling for every acre, (or four shillings and two pence for every hundred acres) is now annually reserved on all lands granted by the proprietors; yet for the particular benefit and advantage of the adventurers in this lottery, no more than one shilling sterling shall be reserved on every hundred acres of the said 100,000 acres, as was agreed to, and paid by the first purchasers and settlers in the province. The reservations as to mines to be as usual; that is to say, three-fifth parts of all royal mines, and one-fifth part of all other mines, free of all charges for digging and refining the same.

3. That the tickets to be delivered to the adventurers be expressed in the words following, viz.

This ticket entitles the bearer to whatever prize shall be drawn against the number hereunto prefixed, in the lottery for the sale of one hundred thousand acres of land in the province of Pennsylvania.

4. That the number of blanks and prizes be as followeth, viz.

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becoming adventurers themselves, or by purchasing of prize tickets, may have liberty to lay their rights on the lands where they are so seated.

6 and 7 Managers appointed, to draw the lottery, publish the prizes, &c.

8. That the adventurers entitled to prizes, are to bring or send in their tickets to be examined with the books kept by the managers, that certificates of the prizes belonging thereto may, by

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any one of them, be endorsed thereon, which being produced at the secretary's office, warrants shall immediately issue to the surveyor-general, directing returns to be made accordingly; on which returns patents of confirmation shall be forthwith granted, on the usual fees to the several officers concerned. For which examination and certificate two shillings and no more shall be paid.

9. That any person having a right to sundry small prizes, may have them, or as many as he shall chuse, included in one warrant, or a large prize divided into smaller parts, not less than 200 acres in one parcel, and take warrants accordingly.

10. That for the more effectual securing to the adventurers the surveying and taking up of lands they may be entitled to; and to the end that the same may be laid out to their satisfaction and advantage; it is agreed by the proprietors, *that from the date of these proposals, and for twelve months after the drawing is finished, no warrants shall issue for the taking up any vacant land within the province, nor that any lands therein be surveyed, except only on former contracts, and warrants that have issued, or lands seated and improved before the date hereof.*

11. That the lottery be drawn in public, in the month of December or January next, or sooner, if the whole number of tickets shall be disposed of before that time.

Lastly, Whereas several of the adventurers may be unacquainted with proper places whereon to locate their prizes they will be entitled to; it is therefore further agreed, that several tracts of the best vacant land shall be laid out, and divided into lots, for all prizes not less than 200 acres; all which lots shall be numbered, and drafts thereof lodged with the managers, and the surveyor-general. The prize tickets of 200 acres and upwards, (which will be mixed with the other prizes and blanks) are likewise to be numbered on the inside thereof, so that the situation of all such prizes will be determined at the same time that the tickets are drawn, by corresponding numbers on the said drafts; exact registers of the numbers on such tickets are to be made with the daily entries of prizes drawn, that the adventurers may, on examination, know what lots they are entitled to.

But for the further satisfaction of the adventurers entitled to such prizes, they shall have the choice either of abiding by their respective lots, or of laying their rights on any other lands within the province, as is provided in the fifth article. And such of the adventurers as shall be

entitled to prizes of 500 acres and upwards, may have them subdivided into parcels of not less than 200 acres, by regular lines, conformable to the courses of the whole tract, and take either one or more of those subdivisions.

The several located tracts abovementioned, with the usual allowance for roads and highways, shall be reserved for the use of the adventurers twelve months after the drawing shall be finished, and no longer; that is to say, six months for the use of those entitled to prizes of 200 acres and upwards; but if they do not within that time declare to the said managers their intention of taking the lots that fall to their share, any adventurer, possessed of other prizes, may, within the remaining six months, lay their rights, by regular lines as aforesaid, on such appropriated lots.—(Proprietary papers, No. 197.)

This lottery never filled, and was therefore never drawn; yet as many tickets were sold, they became the titles to lands. But the surveys were made, and the lands surveyed were for a long time kept apart from the common mass of property; and so late as the years 1769, and 1770, we find warrants of acceptance for part of these lottery lands, on special terms. Upon inspection of the warrant book, no warrants appear to have issued for more than a year, but for parts of old rights, or such as were founded on previous settlements and improvements, on former agreements, or warrants of re-survey, as promised in the lottery scheme.

Of the law of improvements, we shall speak at large in another part of this note. It grew up from a very early period, by the acquiescence of the proprietors, and their officers. In this lottery scheme they are recognized, and excepted from other appropriations, although there could be no necessity arising from the shutting of the land-offices in 1735. It is true, in the beginning of the scheme, improvers are spoken of, as persons who had *inadvertently* settled on lands to which they had no right; yet they were never disturbed, although some of the public acts of the proprietors *seem to discountenance the practice*. It had however taken so deep a root, that at this period, and in later times, it became a part of the settled law of the board of property to give the preference to the improver in every case of conflicting rights.

Improvements, without warrants, did not form part of the system of William Penn; nor did he contemplate any other kind of title, than legal purchases from himself. Thus, in 1687, one *Allen* had seated land contrary to order, and without being surveycd. He was therefore

ordered to appear before the commissioners, to give his reasons therefor, or process to issue against him in the proprietary's name. He appeared accordingly, and was ordered to leave it in a reasonable time, or be prosecuted. Journal F.

November 23d, 1738, the following proclamation issued, by the proprietaries of Pennsylvania.

Whereas great numbers of people have heretofore obtained from our commissioners of property and lately from ourselves, warrants directed to our surveyor general, for surveying to them the quantities of land mentioned in their respective warrants, for which they agreed to pay to us the consideration money and quit-rents, therein specified and reserved, with express conditions in the said warrants likewise contained, that in case the persons to whom the said lands should be surveyed, did not fulfil their respective agreements within the space of six months from the date of the said warrants, that then the said surveys were to be void.

And whereas many persons have by colour of the said warrants and surveys, possessed themselves of the lands mentioned in the said warrants, without having complied with any part of the conditions upon which they obtained the same within the time therein limited, by reason whereof the said warrants and surveys, and all the estate thereby intended to be conveyed, are become utterly void.

And whereas others under pretext of leave from our commissioners, and some without any leave, licence, warrant, or other authority whatsoever, have entered into the possession of our lands, and have taken upon them to transfer their claims, under the name of improvements, to others for considerable sums of money, and great numbers of all sorts have cleared great part of the land upon which they are seated, and continue to cut down and destroy the timber, without any regard to our property, and in manifest prejudice of our right; so that we might legally proceed without further delay, to remove all such persons from their possessions; yet in consideration of the hardships which many of the persons might suffer in the winter season, should they now be turned out of their dwellings, we have thought fit to give this public notice to all who hold any of our lands under any warrants or surveys, or pretended assignments, or under pretence of a possession without authority as aforesaid, or otherwise howsoever, who have not paid any considera-

tion money for the same; that unless they shall before the first day of March next, pay unto our receiver general the consideration money which ought to be paid according to the usage of our land office, for the lands of which they are possessed by colour of the premises, so that they have them confirmed by patent, they will be proceeded against according to law, in order to be removed from their possessions; and the lands from whence they shall be removed, will be granted to such as will pay for, and improve the same. By order of the proprietaries. *Richard Peters, Sec'y.*

That this call upon the people was not complied with in very many cases, is certain. That any measures were pursued to remove settlers does in no wise appear; and but a little reflection is necessary to persuade any one that proceedings of that nature would have been impracticable. The strong presumption is, therefore, that such a measure never was attempted. But to this period we trace a new kind of warrant, called a *vacating warrant*. These warrants, recite, "That a former warrant of a certain date had been granted for the land, and that no money had been paid, and that the warrantee had not complied with the terms." The proprietors therefore vacate the old warrant and direct a survey to be made of the land to the new warrantee, or that the survey already made be returned and accepted to his use, (as the case may be.) The other recitals are various according to the circumstances attending the particular case. Sometimes they recite transfers from the original warrantee; but in many cases, where no money was paid, there are no recitals which can lead to any facts respecting the nature of the transaction, or enable us to determine precisely, whether in any case such vacating warrant issued *adversely*. In many cases, where money had been paid on account, such payment is carried to the credit of the new warrantee; which could not have been done, but by some compromise with, or satisfaction to, the original owner, manifestly appearing to the officers. In other instances a mixed kind of warrant appears, partaking partly of a vacating warrant, and partly of a warrant of acceptance.—An instance of this latter kind is here given: "Whereas a warrant dated the 6th day of January, 1737, was granted to Joseph Scott for two hundred acres of land, &c. but the said J. S. did not comply with the terms of the said warrant, whereby the same became void; nevertheless his executors took upon them to sell the said land at public vendue, &c." it then recites that the pur-

1784. chaser procured a survey to be made to H. B. "who hath humbly requested us to grant him a warrant for the acceptance of the said survey, and we favouring his request, &c."

There is but one case on this subject, the lessee of *Robert Lowrey v. James Gibson* in Cumberland, April 1796, before *Shippen* and *Feates*, Justices, *Mass. Reports*.

Ejectment for 200 acres of land in Hopewell township, brought in the common pleas to October term 1781.

The plaintiff claimed under a survey, of 200 acres, made by Thomas Cookson, D. S. on the 11th of September 1744, marked "surveyed on a ticket, warrant to be made out," and a subsequent warrant to the lessor of the plaintiff for 100 acres of land in Hopewell, and dated 18th of February 1744-5. Both the survey and warrant were indorsed—vacated and returned for the use of *George Croghan*.

The vacating warrant was dated 22d of June 1749, in favour of the said *George Croghan*, and recited that "the conditions of the former warrant had not been complied with." The defendant claimed under a patent issued on the day following to *Croghan*.

It did not appear, that any money had been paid by *Lowrey*, when he obtained his warrant, or that he had ever been in the actual possession of the lands in question. On the contrary, it was sworn by one witness, that in 1779 he wished to buy the lands from plaintiff, and offered him £100 for them, if he could make him a good title; and enquired of him whether he had not contracted with *Croghan* for the tract, to which he replied in the affirmative, but that he had received from him only £6. The land was then uncleared, but now almost all of it was in cultivation.

The plaintiff's counsel contended, that vacating warrants were utterly against law, unless preceded by an actual entry. The late proprietaries were as much bound by settled legal principles, as any individuals. No private person, after any lapse of time, however great, could annul by his own power, a contract of sale, by a memorandum endorsed thereon. Warrants to survey lands, recite the agreement of the parties, the terms of purchase, and the time of payment. Money was commonly paid on the issuing of the warrant, and so the jury would presume in the first instance, though no proof was given of it.

At all events a warrant effected an estate on condition, and in case of a condition broken, the law was clear, that a re-entry was necessary to defeat the first

estate granted. Co. Lit. 202, b, 218, a, b, 2 Black. Com. 155. Supposing it to be a mere agreement for the sale of lands, the vendor, after he had contracted to sell, stands in trust for the vendee. The maxim in equity is clearly established, that what ought to be done, shall be taken as done. 3 P. Wms. 215. 3 Black. Com. 438. 2 Vez. 631. 638. and a covenant for a valuable consideration, is, in equity, tantamount to a conveyance. *Powell* on Dev. 594. Where there is a condition for the payment of money, the court will grant relief. 1 Stra. 455. If paid with interest it is sufficient, 1 Fonb. 388. The prevailing distinction in equity, is to relieve against conditions, as well precedent, as subsequent, where compensation can be made. 1 Eq. abr. 108. Ambl. 511. 514. 1 Salk. 156. 1 Chan. ca. 49. 96. 12 mod. 184. 2 Vern. 222. 366. 594. But this condition is not precedent to the vesting of the estate. It is similar to the case in *Gilb. Eq. Rep.* 43. *Proc. Chan.* 387. S. C.

The clause usual in all warrants, that "in case the party fulfils his agreement within six months from the date, the warrant and survey shall be valid, otherwise void" has never been construed with the strictness contended for by the defendant: and if such was the law, the most pernicious consequences might ensue to the community. A custom to vacate warrants has never existed, where surveys have been made on them; and such warrants have never prevailed, unless by the agreement of the party who took out the first right.

The defendant's counsel argued, that whatever effect the words of a warrant might have, the fact was notorious, that many valuable titles depended on vacating warrants, which it would be highly dangerous now to unsettle. The late proprietaries, as lords of the soil, granted their lands in their own mode, and in many instances adopted the practice of issuing vacating warrants. The proof of particular equitable circumstances, inducing them thereto, cannot reasonably be expected after a great lapse of time. They will be presumed after a length of years and possession. Livery and seisin shall be presumed after a possession of twenty-five years. 12 Vin. 126.

Cases have occurred of warrants having been granted where no money has been paid, though it is admitted they are rare; but from no proof being given of such payment, the jury should not conclude there was money paid.

Though an individual cannot by his own act defeat a purchase made from him, yet chancery would not decree the specific execution of a stale agree-

ment; and hence it is, that warrants and locations not pursued up with proper diligence, will not give a title to lands. One coming to be relieved against a forfeiture, must claim within a reasonable time, 1 Vern. 450. One conusant of his right, suffering another to build on his land, shall be postponed, 2 Atk. 89. A defective estate shall not be aided against one who has the estate on good consideration.

The court recommended to the counsel to state the case, in order that the legal point respecting *vacating* warrants might be solemnly settled in bank; but they declined it on each side.

The court then summed up the evidence to the jury, and premised, that in all cases where there had been great length of possession, and improvements made under a complete legal title, the jury should be very cautious before they find a verdict against such person.

As to vacating warrants, many titles depended on them. Whether the common provisions in warrants, that "If the agreement was not fulfilled in six months, the warrant and survey should be void," were *limitations* or *conditions*, the court would not now determine; nor what was the strict legal operation of such warrants, giving a surveyor an authority to survey and make return of lands. Certainly the party in whose favour the warrant issued, might *abandon* his claim, and forfeit it by great *laches*, or neglect; or, in those early times, *sell and transfer* it by *parol*. Where one has trifled, or shewn a backwardness in performing his part of the agreement, chancery will not decree a specific execution. So where a contract has lain dormant many years.

When a warrant right, therefore, has not been pursued within a reasonable time, owing to such circumstances as have been before stated, or of a like kind, the proprietary officers pursued the custom of issuing *vacating* warrants, and such power, in the settlement of a young country, was absolutely necessary for the common welfare. It was not the usage to grant them, unless after full inquiry, and the special equitable circumstances thus ascertained, were never recited in the *vacating* warrants. The proprietaries were not in the habit of hunting for forfeitures, or of strictly exacting them. Some proof of a sale by *Lowrey* to *Croghan*, has been produced; but from the length of time since the transaction happened, it would be reasonable to presume some grounds on which the *vacating* warrant issued, if no such evidence had been given. The law greatly favours a long possession, and

it is fair, just, and legal, to presume a contract of the plaintiff with *Croghan*, without positive testimony. An act of parliament may be presumed; a grant may be presumed from great length of possession, Cowp. 215. No evidence has been given of any collusion between the proprietary officers and *Croghan*.

Supposing, however, the complete legal right of the defendant out of the question, and that he relied solely on his possession, and those who preceded him, how would the case stand? The survey was made on a ricket, previous to the plaintiff's warrant, which does not appear to have been accepted in the proper office, whether he paid money on his warrant, or not, of which there is no evidence. If he did not with due diligence follow up his warrant, lay by 37 years before he brought his ejectment (which is near 15 years ago;) took no possession, nor did any act of ownership, but silently permitted others to improve the soil by their labour, he cannot now expect to succeed on any principle of law or equity. Verdict for defendant.

But that the cases are *rare* in which warrants issued without the money being paid, as stated by the defendant's counsel, in the foregoing case, cannot be admitted. On the other hand they will be found to be very numerous; and are of two classes: Such as issued with the proprietor's knowledge and consent, expressed; in which cases an entry will appear, in the margin of the warrant "*By special order*,"—and such as went out without such consent expressed, for reasons which perhaps cannot be ascertained.

There is a large number of warrants in the office in a situation still more singular; many which have never been acted on, and others which have; and which form the basis of many titles. We allude to such as have never been signed by the governor, whose signature was necessary. For one class of warrants under this circumstance, the records of the Board of Property furnish a satisfactory reason; and as some titles may depend upon it, the explanation becomes indispensable.

In the year 1755, a warrant issued for lands on the *Juniata*, in the name of *Barnaby Barnes*. It was not signed, nor any money paid upon it. A survey was however made upon it, which was not returned, until a subsequent warrant was applied for, and issued, for the same land, on which money was paid; and it came before the Board of Property, on a contest between the two warrantees, for decision, as to which

1784. warrant the survey should be returned, on the 15th of May, 1768. The Board decided, (governor John Penn being present,) that *Barnaby Barnes's* warrant was in the same situation as that of many others in Governor Morris's time; they were made out and entered in the warrant book in the secretary's office, and sent to him to sign, but were never signed by him. They therefore held *Barnes's* warrant to be the first appropriation of the land, and confirmed it accordingly. Minute book 1. page 121. The patent issued, but the warrant was never in the Surveyor-General's office. The proprietor did not permit any person to be injured by the negligence of his own deputy. *Robert Hunter Morris* was governor from the beginning of October, 1754, until about the 20th of August, 1756.

The foregoing being a case in which the warrant was not only *unsigned*, but on which *no money was paid*, is in opposition to the sentiments of the court in the lessee of *Daniel Gripe v. the Rev. David Baird, Huntingdon*, May, 1803, before *Yeates* and *Smith*, justices, MSS. Reports; in which the remarkable fact of governor *Morris's* negligence in signing warrants, was either not known, or not mentioned; although the plaintiff's warrant was exactly in the same situation, having been issued in governor *Morris's* time. The case was as follows:

The plaintiff claimed under a warrant issued to *Samuel Smith*, for one hundred acres, in, &c. dated 3d of February, 1755, upon which a survey of one hundred and eighteen acres and allowance was made on the 3d of December, 1774, by *Thomas Smith*, D. S.

The original warrant directed to *Richard Tea*, the former deputy surveyor of the district, and indorsed by T. Smith, "Executed 3d December, 1774, Spring meadow," together with two other office copies of the warrant, were severally *unsigned* by the governor.

Mr. Smith was examined as a witness, and proved that it was the uniform practice of succeeding deputy surveyors to execute warrants directed to their predecessors, without a new direction for that purpose, and such surveys had been invariably received in the Surveyor-General's office; but having made the survey, Mr. Smith declined sitting as a judge in the cause.

After the testimony was closed, *Yeates J.* interrupted the defendant's counsel, who were opening their defence. He said, Judge Smith's testimony had fully obviated one difficulty which presented itself respecting the survey; but he thought it impossible to support the survey, unless the original warrant had

been signed by the governor for the time being, as the chief commissioner of the Board of Property, or money had been paid thereon to the Receiver-General. The objection, however, appearing to be a surprise on the plaintiff's counsel, which they were unprepared to meet or answer, a juror was withdrawn by consent.

The case came on again, before the same judges, in May, 1805, when a credit was produced from the Receiver-General's books for £.5, on account of the warrant; and it was admitted to be an authority to survey the lands, as the party had complied with the contract on his part. But a verdict was found for the defendant on other grounds. MSS. Rep.

In bringing together so great a number of facts, it is impossible to avoid some repetition; nor can the order of time be distinctly observed; this part of the note is, as it is called, entirely miscellaneous; and perhaps as irregular as the subject.

It must have been observed, that in *Barnaby Barnes's* case, a survey made on a warrant, which was not only *unsigned*, but *no money paid*, nor the survey returned, was not for any of these reasons considered to be illegal; but was adopted, as being the first appropriation of the land by the governor, who was himself one of the proprietaries, and the whole Board of Property, in opposition to a regular warrant, and money paid. It is true the warrant was issued in governor *Morris's* time, who appears generally, to have neglected to put his signature to the warrants, without which they could not be entered with the Surveyor-General.

It also appears by the recital of a very great number of vacating warrants, where surveys were made, that *no money was paid*; so that the practice must have been pretty general.

In coming down to Secretary *William Peters's* time, in 1762, we find certificates delivered that warrants had issued, when none had, nor can be found; and no money was paid. Yet we find surveys made on these, which were legalized in Mr. Secretary *Tilghman's* time, by warrants of acceptance. These entries on the warrant books, where the warrants did not formally issue, in 1762 and 1763, have been likened to applications, to which they bear no correct resemblance. Certificates were printed for the purpose of being sent into the country, upon which the surveys were made; and it rather appears to have been a plan adopted by the secretary, (however irregularly and improperly, certainly not *imprudently*, in the technical sense of the word,) for the accommodation of the people who were

willing to settle in a remote and motin-tainous country, and probably could not afford to pay down even the price of a warrant.—And whatever complexion might be given to a single case coming before a court of justice, without a view of the extent of a particular practice; that complexion would be changed by proof of such frequency in the mode, as evidently to shew it to have been intentional, and the deliberate act of the proprietary's own agent. And it is further presumed, that the special instructions given to the deputy surveyors, at a subsequent period, not to make any surveys, but upon orders from the Surveyor-General, for the future, looked back to this irregular practice, and impliedly recognized it. So, with respect to warrants which issued in very great numbers, without money paid; the same mode of reasoning would apply. The practice was too common. The mischief of declaring such warrants void, would be extensive; nor would it be for the benefit of the commonwealth, that they should be declared void.

But it is our duty to exhibit every bearing of every case; to give the practice of the country as it was or is. The legislature and the courts alone can establish systems.

In the lessee of *Bernard Dougherty v. John Piper, Bedford*, November, 1801, before *Yeates and Smith*, justices, (MSS. Reports,) which was an ejectment for 108 acres, and 152 perches, in *Coleraine* township.

The plaintiff claimed under a slight improvement of some adjacent land, made by *James Wells*, who sold to *Edward Logston*, on the 16th of January, 1765. *Logston* conveyed to *Dougherty*, on the 26th of the same month.

He offered in evidence a copy of an original warrant in his own name, dated 17th of April, 1766, for 230 acres, including his improvement, which he purchased of *Edward Logston*, who purchased of *James Wells*, lying on a branch of *Juniata*, called *Piper's run*, known by the name of the *Flag-bottom*, about 14 miles from *Bedford*. Interest to commence from 1st of March, 1762, on this warrant was endorsed a direction, under the signature of *John Lukens*, then Surveyor-General, to *Richard Tea*, deputy surveyor, to execute the warrant; also, in the hand writing of the said *Richard Tea*, "Executed, November 11th, 1766, 293 1-4 as. recorded by *R. Tea*."

The plaintiff likewise offered the draught of survey made by the said *Tea*, on the 11th of November, 1766, containing 293 1-4. acres.

To the reading of these papers to the Jury, the defendant's council ex-

cepted; and produced a certificate from *Samuel Cochran*, Surveyor-General, that no such original warrant, nor any traces thereof, could be found in his office; a second certificate from *Francis Johnson*, Receiver-General, that no money appeared in his office, to have been paid thereon; and a third certificate from *David Kennedy*, secretary of the Land-Office, that the original warrant then remained in his office.

It likewise appeared, by the testimony of Mr. Justice *Smith*, that during the period in which *William Peters* acted as secretary of the Land Office, some complaints existed, as to issuing warrants, where they had not been paid for, but that all these irregularities were cured, when *James Tighman* came into that office.

By the Court. Let the warrant and survey be received in evidence. Their operation will be judged of afterwards. It will be remembered, that the warrantee has not conveyed his right to any other person; and the warrant has issued from the office *improvidē*.

The residue of the case goes to other points, not applicable here.

Again, in the lessee of *John Nicholas*, and others, v. *William and John Holliday*, *Huntingdon*, May, 1802, before the same judges. MSS. Reports, on an ejectment for 200 acres of land in *Frankstown* township.

The plaintiff claimed under a warrant to *Edward Nicholas*, for 150 acres, including his improvement, about one mile and a half from the forks of *Frankstown* branch of *Juniata*, in *Cumberland* county, dated 6th of September, 1762, on which £. 7, 10, s. was paid into the office of the Receiver-General, and a survey thereon, of 199 acres, and 17 perches, made 25th of May, 1765, by *Samuel Finlay*, who acted under *Richard Tea*, the surveyor of the district.

The defendants set up a defence under the copy of an application entered in the Land-Office, in warrant book, T, on the 3d of March, 1763, in the name of *James Haldane*, for 300 acres, on the south side of the middle fork of the *Frankstown* branch, including a dry draft above the hill, which closes in and stops the passage on that side of the creek, in *Cumberland* county; also on a like application, entered on the same day, in the name of *Timothy M'Kinley*, for 300 acres, (described as above,) about a mile and an half above the draft.

Two warrants appeared to have issued on the same 3d of March, 1763, to *Haldane* and *M'Kinley*, describing the lands as in their respective applications. They were both directed to

Thomas Smith, with the following indorsements, signed by *John Lukens*, Surveyor-General. "It is supposed the land for which this warrant was granted, interferes with prior warrants. Execute this warrant on lands left out by prior warrants, and make return into my office."

Copies of surveys made by *Richard Tea*, in pursuance of these warrants, on the 18th of May, 1765, were offered to be read in evidence, the one for *Haldane* containing 301 acres, the other for *McKinley*, containing 287 acres, which appeared to be returned into the Surveyor-General's office, on the seventh of March, 1767.

These applications, warrants and surveys, were opposed as evidence, by the plaintiff's council. As grounds of objection, they shewed a certificate from the Surveyor-General, that there were no warrants in his office to *Haldane* and *McKinley*, but that certified copies of the applications were filed therein, as of the date of 14th of July, 1794. Another certificate from the Receiver-General, that no money appeared to have been paid in his office, either on the application of *Haldane* or *McKinley*. Also two surveys by *Thomas Smith*, made on the 2d of December, 1774, the one for *Haldane*, containing 213 acres, and the other for *McKinley*, containing 202 3-4 acres.

They contended that an application for a warrant was no authority to survey lands in 1763. The papers produced were mere copies from the warrant book, and it is well known, that the introduction of locations, or applications as grounds of survey, did not obtain until August, 1766, in the proprietary Land-Office. (This is a mistake of a year, as applications originated on the east side of Susquehanna, in 1765.)

The warrants must have issued fraudulently, or improperly. No warrants ever issued without money being previously paid, or without reciting a consideration, as services performed, &c. But granting to these warrants a degree of validity to which they are not intitled, what authority had *Richard Tea*, to execute them? He could not legally act without a deputation. But they were specially directed to *Thomas Smith*, and he is interdicted expressly from surveying any lands which might interfere with prior warrants, which he certainly would not have done, if he had known the true state of the facts. The very execution of the warrants by *Mr. Smith*, was an abandonment of the former surveys, supposed to have been made by *Tea*. They were not warrants of re-survey. To afford

a feeble prop to the inofficial surveys by *Tea*, copies of the applications are surreptitiously thrust into the Surveyor-General's office, as of July, 1794.

By the Court. The papers offered, come before the court in a very questionable guise, and wear a suspicious appearance. But let them be read, as was done last circuit court, at Bedford, in *Dougherty's lessee, v. Piper*, in a case resembling the present. We will judge of their legal operation; and facts will arise on them, of which the jury are the constitutional judges.

It appeared in the course of the trial, that *Haldane* and *McKinley* had in June, 1764, conveyed their respective warrants to *John Little*, and *Richard Tea*, in consideration of £. 5, and that the defendant, William Holliday, on the 25th of April, 1774, had entered into an agreement for 500 acres, part thereof, at 20 s. per acre.

After the cause had been fully argued, the court charged the jury, that it was obvious the application for a warrant in 1763, before the system of locations was adopted, did not authorize a survey. Neither could a warrant directed to *Mr. Smith*, justify a survey and return by *Tea*, unless by the authority of the former. The act was inofficial. It is true the late proprietaries might bind themselves by warrants issued in a new mode; but this departure from the usual forms of the Land Office, must be shewn to have been intentional by strong and cogent proof; otherwise the transaction would give just cause of suspicion of unfair practice; and it is clear, that the proprietary officers could not, by such unusual procedure, divest or affect the interest of grantees claiming under prior rights, who had paid their money in confidence of such contract.

It may be remarked, on the above case, that it was not the usual practice to transmit the warrants, although sealed and signed, into the Surveyor-General's office, until the money was paid; although they have been both signed and sealed before the money was paid; and even this was contrary to usual practice to annex the seal before the money paid. But although the warrant for these reasons, was not filed in the Surveyor-General's office, yet it is evident he assented to its going out, by his special directions upon it, and two of the three officers of the Land-Office must have been fully aware of the facts. It is moreover not universally true, that unpaid warrants were not deposited in the Surveyor-General's office. The instances to the contrary are numerous.

It has been already stated, that there

are a great number of warrants of acceptance, which recite "*Whereas, by our consent and direction, a survey was made, &c.*" But there are no entries to establish the fact of consent. In the lessee of *Benjamin Elliott, v. Jacob Bonnet, Bedford*, November, 1801, before Yeates, J. MSS. Reports. The defendant produced a warrant of acceptance, dated 26th of May, 1763, issued in favour of *George Croghan*; reciting, that by our consent and direction, there was surveyed in 1755, by *John Armstrong, D. S.* a tract of land, &c. and requiring the Surveyor-General to accept the survey, and return it into the secretary's office. The survey offered in evidence was dated in 1755, with the signature of *John Armstrong, D. S.* but without specifying any authority under which it was made, and was received in evidence after opposition, being called for in the warrant of acceptance.

The judge, in his charge, told the jury, that for any thing that appeared, this survey was an unofficial act, made without authority. The recital of it in the warrant of acceptance, as made by the consent and direction of the proprietaries, cannot legitimate it, as against the plaintiff, and those claiming under him. The recital is evidence against the late proprietaries and those claiming under them by subsequent conveyances, but not against those holding under an earlier right.

This case will be again cited for other purposes.

But although, generally, a survey would not be considered legal without authority, yet a particular custom to make surveys without warrant, upon payment of money to the deputy-surveyors, has been established by solemn decision. A single case will elucidate the whole law upon this point.

Lessee of *George Woods, v. John Galbreath, Cumberland*, May, 1798, before *Shippen and Yeates*, justices. MSS. Reports. Ejectment for 70 acres of land, in West Pennsborough township.

The plaintiff claimed the lands under an early settlement made on them in 1744, by his father *James Woods*. Two surveys made by *George Smith*, a deputy employed by *Thomas Cookson*, deputy-surveyor of the district, in 1745, said to contain 235 3-4 acres, and allowance, without warrant. A receipt of *Lynford Lardner*, Receiver-General, for £.17 18s. on account of lands in Pennsborough township, by the hands of *Thomas Cookson*, dated 24th of May, 1746. A second receipt of *Edmund Physic*, Receiver-General, for £. 30, on account of his land in the said township; a warrant to himself for 235 acres, including his improvement, and a survey made by *Thomas Cookson's* deputy in 1745, for his father, and a re-survey by *William Lyon*,

thereon, containing 258 acres and 32 perches, on the 31st of October, 1771, and his father's will.

The defendant claimed under a warrant to his father, *James Galbreath*, for 150 acres, adjoining his dwelling plantation, dated 15th of April, 1763; a survey thereon of 222 acres and 127 perches, on the 2d of June, 1763; a patent dated 12th November, 1763, and his father's will.

On a caveat filed by *James Galbreath* against the acceptance of *Wood's* survey, the board of property, on a hearing, on the 29th of May, 1775, rejected part of the original survey, the same being said not to have been returned, and made without warrant, he having no improvement thereon.

The plaintiff offered *William Lyon* as a witness to prove the general usage of the Land-Office, and of the deputy-surveyors in that district, in early times, in making surveys without warrants, agreeably to instructions received from the secretary of the Land-Office, on £.5 per hundred acres, being paid to such deputies, besides the surveying fees. That surveys thus made had uniformly been sanctioned by the commissioners of property: and that many titles to valuable estates depended on surveys of this nature, subsequent warrants having usually been taken out by the deputy-surveyors, to whom the money had been paid.

The defendant's counsel objected thereto, and insisted that such usage could not with propriety, be received in evidence. Surveys made without the proper and usual authorities, were mere private acts, and could confer no right whatever. The defendant claims under a patent near 35 years old. This very point was determined between the same parties on a former trial in this court on the 1st of June, 1781, and *McKean, C. J.* then held, that a survey under such circumstances gave no title, and was wholly invalid; and the plaintiff thereupon suffered a nonsuit.

The plaintiff's counsel answered, that true it was, such was the event of the former cause, and such were the sentiments of the court shortly after the Revolution, and in 1781. But a more minute consideration of the settlement of the country, and of the circumstances attending it, had since produced a different doctrine. So, of improvements, against which the courts at first much inclined, but on being afterwards much encouraged by the policy of the legislature, it became their duty, and it was now their practice to protect them. But there was little occasion to go into a system of reasoning upon the subject. In the case of the lessee of *Samuel*

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Turbett, v. William Nicholls, and Elizabeth Vance, at Nisi Prius at Chambersburg, on the 27th of May, 1789, the former question was again revived, on the deposition of general John Armstrong, being offered in evidence by the defendants to prove the custom now contended for. The adverse counsel relied on the authority of the court's decision between these parties in 1781, as conclusive. But after full argument the deposition was ordered to be read in evidence. The chief justice then expressed himself thus;—"Cases in England are not strictly applicable to the modes of granting lands by the late proprietaries. Such titles are founded on usage; and usages, if reasonable and beneficial to the people, form a law. The law has great regard to the practice and usage of the people, the law itself being nothing else but common usage, 2 Mod. 238. So, of the custom of a parash, that tenant for years to reap and carry away his way going crop, after the determination of his lease. Dougl. 191.

By the Court. The evidence appears to us to be admissible. The case of *Turbett's lessee v. Vance*, in 1789, is expressly in point. Courts of justice are frequently governed in their determinations by the customs of the country;

as in the case of administrators selling in early times, improved and even warranted and surveyed lands, as mere chattels, without any order of Orphan's Court. So, of the practice of the Land-Office, under which a great part of the country has been settled, though not strictly regular in itself. Surveys under the usage, if established, cannot be considered as private acts. They are the proceedings of known proprietary officers, duly authorized by their principals, to receive money for them as their agents, and to make appropriations of land by surveys. The practice tended to unite the proprietary and individual interests, and contributed greatly to the ease of the people. The characteristics of a good usage, are, that it be generally used and approved; and according to the case cited by the chief justice, in 2 Mod. 238, the law is but common usage, with which it complies, and alters with the exigency of affairs. The witness was accordingly received, and the usage fully proved by him. Verdict for plaintiff.

On motion for a new trial, in bank, it was refused; and this opinion was not questioned.

Note. The Land-Office opened for the purchase of 1754, on the 1st. of Feb'y, 1755.

PART III.

Of the practice and customs of the Land-Office, from the year 1765, until the Revolution.

The peace of 1762, brought a considerable degree of repose to the long harassed British colonies. In October, 1764, the turbulent and restless *Kayahuta* buried the hatchet on the plains of *Muskingum*; and the final humiliation of the *Delawares* and *Sshawanes* enabled the husbandman to resume his labours, and to extend his cultivation and improvements. The prosperity of Pennsylvania increased rapidly. Those who were compelled, by Indian warfare, to abandon their settlements, eagerly returned to them. There exists in man, says lord *Kaimes*, a remarkable propensity for appropriation: "A man who has bestowed labour in preparing a field for the plough, and who has improved that field by artful culture, forms in his mind an intimate connection with it. He contracts by degrees a singular affection for a spot, which in a manner is the workmanship of his own hands. He is fond to live there, and there to deposit his bones. It is an object that fills his mind and never out of thought at home or abroad. After a summer's expedition, or perhaps years of a foreign war, he re-

turns with avidity to his own house, and to his own field, there to pass his time in ease and plenty. If he happen to be dispossessed in his absence, the injustice is perceived and acknowledged."

The correctness of these sentiments of lord *Kaimes*, could not be more strikingly exemplified, than in the case of *Elliot's lessee, v. Bunnet*, before cited.

Thomas Croyle had an ancient settlement and improvement, made near the head of the Snake Spring, begun in 1754, and continued by him, and those who held under him, whenever the state of the country would admit of it, until December, 1788. Valuable improvements were made on the land, as well by buildings, as otherwise.

In June, 1762, he sent his son with money to the secretary of the Land-Office, with directions to procure a warrant for 300 acres of land, including his improvements. He made three applications to the office for that purpose, but met with refusals, and was permitted to take out a warrant for 100 acres only, dated 10th of June, 1762; adjoining lands surveyed to *George Croghan*, and including his improvement at the mouth of Snake Spring. On this warrant, a survey of 123 acres, and 123 perches, was made so late as 4th

of March, 1768, by *George Woods*, for *Richard Tea*, deputy-surveyor of the district.

The survey for *Croghan*, in 1755, and the warrant of acceptance on the 26th of May, 1763, and the patent on the 30th of May, 1763, under which the defendant claimed, have been already mentioned. This survey called for *Thomas Croyle* on one of the lines, by which the previous settlement of *Croyle* was clearly recognized by *John Armstrong*, the deputy.

On the 3d of August, 1767, *Thomas Croyle* obtained an application for 200 acres, adjoining his warranted land in *Croyle's valley*, on the east side of the *Ray's town branch of Juniata*, on which there was surveyed 158 acres, by *George Woods*, on 12th of March, 1768.

On the 14th of April, 1774, *Croyle*, executed a deed to *Robert Elliott*, in consideration of £. 330, for three tracts of land; the first including the mouth of Snake Spring, in pursuance of his warrant for 100 acres; the second adjoining thereto, in pursuance of his application; and the third, held by improvement, including the fountain of Snake Spring; with a covenant therein, that he would prove his right of improvement to be antecedent to the right or claim of any other person. On the 30th of March, 1780, *Robert Elliot* conveyed the same lands to the lessor of the plaintiff, with covenant of general warranty as to the improvement right. In December 1788, the tenant of the lessor of the plaintiff was dispossessed of the lands claimed by improvement, under a judgment, without a hearing of the merits.

After the case had been fully argued, *Teates, J.* told the jury, that the case resolved itself into two questions, 1st, whether the settlement title being the earliest, was not preferable to the patent? 2d, Whether the improvement right had been abandoned?

If the witnesses were believed, they shewed an actual personal resident settlement by *Croyle*, at the head of the Spring, though he had a shed, and some cleared land at the mouth. He had cleared several acres towards the mountain, and downwards towards the *Juniata*, and must, in the nature of things have intended to include the whole in his settlement right. His continuance on the land when there was not impending danger; his early returns after the dangers had ceased, evince his unequivocal intentions. The survey of 1755, calls for his lands as a boundary, and corroborates the testimony of the witnesses. He applied in 1762, with his money for a warrant for 300 acres, to include his improvement, according to the uniform usage of the office, but was refused, and could only obtain a warrant for 100 acres, to include his improvement

at the mouth of Snake Spring. He could do no more; and it would seem, that the patent, unless there has been an abandonment of the improvement right, must give way to it.

The abandonment must be judged of by the jury, as a matter of fact, under all the circumstances. When *Croyle* applied for his warrant for 300 acres by his son, he did not mean to abandon, he was dissatisfied with what his son had done, and said he would apply to Mr. Penn for justice. He clings to his improvements; and will not surrender the possession of them; and when he sells to *Elliott*, he pledges himself to prove his prior right. If the present defendant or any persons under whom he claims, had made valuable improvements since the former recovery by default, and before the present ejectment was commenced, it would avail him much, as proof of an abandonment, but no such evidence has been given.

The jury gave a verdict for the plaintiff for 176 acres and 37 perches, finding where the same should be surveyed; which, with the survey of 123 acres, and 123 perches, already surveyed on his warrant, made up the exact quantity of 300 acres, without any surplus, upon an established principle, which will hereafter be considered.

This view of the doctrine of improvements is here given, for the purpose of introducing the application system of the year 1765. Whether improvements were at first only connived at; or whether they were expressly encouraged, as seems to be the prevailing idea, (notwithstanding some public acts and proclamations, and the act of assembly of February 14th, 1729-30, (chap. 312,) which declared, "That all and every person or persons, entering into, and taking possession of any lands within the province of Pennsylvania, not located or surveyed by some warrant or order from the proprietary or proprietaries, his or their agents or commissioners, to the person or persons possessing the said lands, or to some person or persons under whom they claim, and upon reasonable notice and request, refusing to remove, deliver up the possession, or to make satisfaction for such lands, shall and may be proceeded against, in such manner as is prescribed by the several statutes of that part of Great Britain, called *England*, made against forcible entries and detainers; and that no length of possession shall be a plea against such prosecution; yet) they had acquired at this period, an establishment not to be shaken; and had contributed, very greatly, to the prosperity of Pennsylvania. The mild laws of our country, the benevolent system of the venerable *Penn*; the forbearing spirit which cherished and protected the rights of conscience, which

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were trampled on, and almost extinguished, in the nations of Europe calling themselves enlightened; and, with these, a land great in extent, happy in its climate, and exuberant in its soil, invited and encouraged emigration from every corner of the old world. Wealth flowed in upon us; but poverty also found its asylum. It was indulgence to the industrious poor that invigorated the country, and changed an uncultivated desert into fruitful fields; and the inhabitants were enabled to draw from the soil itself the means of acquiring the legal title to it, and laying the foundation of future independency. This easy mode of acquiring an exclusive property in land was a principal source of attachment to the country. "A person, says the late Judge *Wilson*, becomes very unwilling to relinquish those well known fields of his own which it has been the great object of his industry, and, perhaps, of his pride, to cultivate and adorn. This attachment to private landed property has, in some parts of the globe, covered barren heaths, and inhospitable mountains, with fair cities and populous villages; while, in other parts, the most inviting climates and soils remain destitute of inhabitants, because the rights of private property in land are not established or regarded."

This state of things with respect to settlements, unquestionably was one of the causes which gave rise to the application system; and we may trace the source in every public act and proceeding. Warrants, on which money had been usually paid, gave place to applications, on which no money was paid. The reason was, that whilst the proprietaries now professed to give a preference to settlements and improvements, they were justly attentive to their own interest, and required proof of the dates of settlements, either in the application itself, or on the return of the survey, that they might know how to charge the interest in arrear, before they were willing to confirm a title by warrant; and the accustomed warrant from henceforth, was called a warrant of acceptance. The accommodation of the poorer class of people, may have been another inducement to this system.

The land on the west side of Susquehanna to the blue mountain, or Kittatinny hill, was purchased in 1736, and from thence, by the purchase of 1754, limited by the surrender and confirmation of 1758, to the west line from Buffalo creek, including a very great part of the Juniata lands, and intersecting the Alleghany mountain as its extreme boundary, as has been already shewn. Warrants issued uninterruptedly for the lands in both these purchases, (in

the latter from February, 1755,) until a stop was put to issuing warrants on the 17th of June, 1765, when the Land-Office continued shut for one year, on the west side, excepting for improved lands. On the 5th of August, 1765, the office opened on the new plan, for the east side generally; and on the west side for settled lands only. The plan was made known to the people by the following official advertisement.

Land-Office, 17th of June, 1765.

The honourable the proprietaries having been apprized, that many persons have been, and still continue in the practice of taking up large quantities of land within this province, only with a design to retail them out at advanced prices, by which means, persons really in want of lands, and willing to make immediate settlement, are often prevented from obtaining them on those moderate and easy original terms, proposed by the proprietaries for the encouragement of the inhabitants: and the proprietaries, being desirous to put a stop to a practice so repugnant to the general good, and, as far as in their power, prevent the troublesome and expensive contentions and attendances in the Land-Office, and other proprietary offices, (owing to the long delay of the people in applying for a confirmation of their titles, which necessarily creates intricacies in their claims, frequent impositions on the offices, and applications for lands either granted before, or to which other persons have prior claims, with many other inconveniences difficult to be avoided on the present mode of granting lands.) It is therefore proposed to make some alterations in that mode, and that, for the future, the following method shall be observed for granting lands within this province, *viz.*

First, That every person desirous to settle any vacant land purchased of the Indians, and not appropriated to the proprietaries' use, shall apply to the secretary of the Land-Office, who, in a book to be opened for that purpose, shall instead of granting a warrant, regularly enter such person's name, with the date of his application, and the description, or location of the land.

Provided nevertheless, that no such application shall be received by the secretary, for more than 300 acres to any one person, without the special order of the proprietaries, or their commissioners of property; and that every evening, the secretary shall cause a true copy of all the applications of that day,

regularly numbered in the order as applied for, to be sent to the Surveyor-General's office.

Second, That on receipt of the copies of such applications, the Surveyor-General shall, with all possible despatch, transmit transcripts of them to his deputy in each county, in whose respective districts they fall, with their dates of entry respectively, and an order for surveying the lands agreeably thereto.

Third, That the deputy surveyor shall, within six months after the date of the entry of each application respectively in the Secretary's office, finish, and make return into the Surveyor-General's office, of the survey of the land, specified in each application and order of survey, provided the copies of such applications be delivered to him in a reasonable time, and the persons for whom the surveys are to be made, or some other on their behalf, shall duly attend the deputy surveyor, to show him the land at the time he shall appoint, whereof the deputy shall give due and timely notice to the appliers. And for the more regular management of this, the Surveyor-General shall frame and send to his deputies, proper instructions, and by all means in his power, take care that they do their duty. And if any deputy surveyor shall be guilty of neglect, or breach of duty in the premises, he, upon complaint, and due proof, made to the commissioners of property, or Surveyor-General, shall be superseded from his office. But if through any neglect of such applier to attend the deputy surveyor, to shew the land at the time appointed, or for any other good cause, such deputy shall not have it in his power to make the return in the time limited, he shall, before the expiration of that time, certify such cause to the Surveyor-General.

Fourth, That as all possible care will thus be taken on the part of the officers to give despatch, it is expected and required, on the part of the people, that every applier shall within six months after the date of the return of the survey into the Surveyor-General's office, (which day he shall carefully minute on the back of each return respectively,) be obliged to come and pay in full for the land, to the Receiver-General, on the new terms of five pounds sterling per hundred acres, or value thereof, in current money of Pennsylvania, at the rate of exchange between the cities of London and Philadelphia, with interest from six months after the date of such application to the time of payment, and the quit-rent to be one penny sterling

per acre. And on producing to the secretary of the Land-Office, the Receiver-General's receipt in full for the land, a warrant shall issue to the Surveyor-General to accept and make return of the survey into the secretary's office, who shall, on receipt thereof, make out the patent with all reasonable expedition, unless the commissioners of property, on account of some other person having a prior claim, or other just reason, shall, for preventing any of the mischiefs before specified, see good cause to refuse such applier a patent. And every applier for land is to take notice, that if he shall neglect to shew the deputy-surveyor the land at the time appointed, or shall not pay to the Receiver-General, the full purchase money within the said six months next after the return of the survey as aforesaid, that then, in such, or either of these cases, the proprietaries, or their commissioners of property, shall be at full liberty to grant the land to any other person or persons.

Fifth, That all persons possessing or claiming lands, on account of any settlements or improvements, are required to enter their applications, in the Land-Office, whether on the east or west side of Susquehanna, and to bring with them authentic certificates from some neighbouring magistrate, of the nature of their improvements, and the time when their settlements first began, and in default or neglect of such applier so to do within six months from the time of opening the said office, on the fifth of August next, the application of any other person or persons will be received for such lands.

Sixth, That as by the almost total stop put by the late Indian wars to surveying on the west side of Susquehanna, a great many warrants on that side of the said river, yet remain unexecuted, the proprietaries' commissioner of property and agents, judge it necessary to open the office first for the east side of that river, in order to give further time to the deputies to execute and return the former warrants for land on the west side. And therefore notice is hereby given, that on the fifth day of August next, the Land-Office will be opened for receiving applications for lands on the east side of the river Susquehanna only, upon the plan and terms aforesaid; and will be opened also for receiving the like applications for land on the west side of Susquehanna, as soon as the said business yet remaining to be done there shall be completed, or in such forwardness as to admit of it, whereof due notice will be given.

And further, That as a considerable

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part of the proprietaries purchase money remains unpaid for many plantations which have been settled a great number of years, notwithstanding the owners thereof have been frequently called on, by public advertisements to pay for the same; all persons, therefore, who have not yet taken out their patents for any such lands, are required, between this and the first day of March next, to come and take out their patents for the said old surveyed lands, to prevent that trouble and inconvenience, both to themselves, and to the office, which must necessarily ensue from their neglecting longer to complete their titles. *William Peters*, Secretary.

Thursday, August 1st, 1765. The Land-Office being to open for the east side of Susquehanna, on the new plan, next Monday, it is resolved, that the secretary give warrants to such persons as have built on, and resided on the land they apply for, and have a just claim to as an improvement, bringing a certificate from a neighbouring magistrate, or other satisfactory proof of the nature of the improvement, and first settling thereof, when the interest and quit rent is to commence.

Improvements made before the land purchased of the Indians, not to be regarded, unless the applier had secretary *Richard Peters's* promise of a warrant, as in case of the manor of *Maske, &c.*

In minute book, I, (cast side) there is this entry.

August 10th, 1765, agreed to, and ordered by the governor, respecting warrants and applications.

Where a piece of land applied for joins a settled plantation, the secretary to grant a warrant with interest and quit rent from time of settlement of the old plantation.

Where no certificate of a justice produced respecting an improvement, and warrant applied for; the secretary to grant it on certificate or proof of other respectable person, especially where at a great distance from a magistrate.

Where no such proof made, then secretary to enter it as an application, and order survey to be made, and the deputy to report, and then issue warrant (if) approved by the governor.

The first item of this minute of the 10th of August, particularly, and the whole minute, generally, seems to have been designed to detect and prevent that species of fraud, which has since been so successfully practised on the commonwealth. An improver, to avoid paying back interest as much as possible, would take an application or warrant for but the actual quantity covered by his buildings, and cleared fields, and would then

enter an application for the adjacent woodland, as vacant and unimproved, although he originally claimed it, and intended to cover it, and hold it under his improvement right. So far as this rule applied to such adjoining quantity, as with the settled land made up no more than the usual plantation quantity of three hundred acres, allowed to improvers, it was correct and proper. But if such quantity had been fairly applied for, under the improvement, and interest charged on the whole from the date of the settlement; it would have been unjust to have extended it to a distinct and independent application for another vacant, and unimproved tract.

But frauds have been practised on the commonwealth to a very great extent. Old warrants have been abandoned, and new warrants have been taken out for the same lands, at reduced prices. Where surveys have been made on unpaid warrants, but the surveys not returned, those surveys have been abandoned, and new returns procured including but part of the lands; and new warrants taken for the residue, at reduced prices. The commonwealth has been aware of this; and a limited act has been passed to enable such persons to purge the fraud, by paying up the difference; but the act has not had much effect; and the people do not seem to be aware how much the neglect of this provision for their benefit, may, at some future day, affect their titles.

On the 3d of October 1765, (minute book I. pa. 7.) the following additional instructions on this subject, were given by the Surveyor-General to his deputies.

"I am particularly ordered by the governor, and proprietary agents, to enjoin you to be very careful in every survey you make, either in applications for land as unimproved, or on warrants for improvements since the opening the office for granting land on the new plan, the 5th of August last, that where you find any improvement on the land, you are fully to inform yourself, and report to the office, with your return of the survey, when such settlement, or improvement, was first began, and where the land has no improvement on it, but joins some other land of the appliers, which has been settled or improved, or has been granted to him by warrant, you are then to express in your draught, or return of survey, that it joins such other land of the appliers."

There are also two sets of general instructions, to deputy surveyors, as follow—

Thomas Penn and *Richard Penn*, esquires, true and absolute proprietaries and governors in chief of the province

of Pennsylvania and counties of Newcastle, Kent and Sussex, on Delaware, to A. B. send greeting. Whereas, &c. our Surveyor-General, with our approbation, hath by a commission bearing even date herewith, deputed you the said A. B. to be surveyor of (*naming the district and its bounds.*)

Now know, that for your better guidance and direction in the execution of the said commission, we have thought fit to enjoin the following instructions for your observation :

1. You shall faithfully execute every such warrant as shall be directed to you, to the best of your skill, knowledge and understanding, according to the express words and order of such warrants, and no otherwise, without special leave first had from us for your so doing.

2. You shall not execute any warrant upon any surveyed lands, or manors, or reputed manor lands, or on any other land appropriated to our use, by any former survey, unless such lands be expressly mentioned in your warrant.

3. You shall lay out all lands as regular and nearly contiguous, as the places will bear, admit or allow of, unless directed by your warrant to the contrary.

4. You shall make returns of every warrant into the Surveyor-General's office at Philadelphia, with a protracted figure of the land exactly performed, and the field works annexed, and that within six months after the receipt of such warrants or order of survey, but if any thing shall happen that the survey cannot possibly be performed within that time, you shall transmit an account in writing into the Surveyor-General's office containing the reason of such delay.

5. You shall not deliver unto any person whatsoever, any draughts, plots or field works of his land before your return be made into the Surveyor-General's office, and be there allowed of.

6. You shall not make use of any chain carriers, but such as are of known honesty, and of good repute amongst their neighbours, which chain carriers shall take a solemn attestation before some magistrate, justly and exactly to execute their trust without favour, partiality or affection.

7. You shall not make return of any surveys but what hath been actually made by you on the spot; and you shall take care that all outlines and bounds shall be fairly and visibly marked before you quit the field.

8. You shall keep fair and regular entries in order of time, of all surveys and re-surveys by you made from time to time, in pursuance of any warrant or order of survey, which you shall receive, with a draught or plot thereof; and field

works annexed, in books to be by you kept for that purpose, and our Surveyor-General shall, from time to time, have free access to the said books of entries and other papers relating to your office as deputy-surveyor, when he shall think necessary, and the said book of entries, and other papers relating to your said office shall be by you (or those into whose hands your papers may fall after your decease,) delivered up into the hands of our Surveyor-General for the time being, or such other persons as we shall appoint, when you (or those into whose hands your papers may fall,) shall be by us thereunto required.

9. Out of all fees that you receive for surveying, or re-surveying of lands or lots during the force of your commission, you shall pay unto our Surveyor-General, the full third part thereof. For the true performance of which instructions you shall give bond to us with security in the sum of £ and sign a counter-part of these presents by indenture.

To A. B. deputy surveyor.

In consequence of sundry letters received from the honourable the proprietaries, and the new regulations in the Land-Office, you are to observe the following rules and orders in surveying of all lands in this province, as part of your instructions.

1st. You shall survey for the use of the honourable the proprietaries, in regular figures generally one-tenth of all lands, or 500 acres out of every 5000 acres that you shall survey, and make return thereof for their use on a warrant dated the 13th of October 1760.

2dly. By their direction and order, you are not to survey on any one warrant, more land than ten per cent. over and above the quantity mentioned in such warrant, with the usual allowance of six per cent. and this rule you are to observe with respect to all past warrants, not yet executed, as near as reasonably may be.

3dly. You are not to survey any of the proprietaries vacant or unappropriated land whatever, *on any ticket or order from any person but the Surveyor-General*, nor unless you have a copy of a regular warrant, or application numbered, and to you directed by the *Surveyor-General himself, or his order.*

4thly. You shall lay out all lands that adjoin rivers or large creeks, at least three times the length from the river or creek, as they are laid out in breadth on the said river or creek, so that each purchaser may have a proportionable front on the water, provided the ground will in any wise admit of it, and to lay out all lands contiguous, and as regular as possible; and you are to give at least ten days notice in each township in your

1784. district, by fixing up advertisement, or otherwise, in one or more of the public places therein, signifying at what time you will attend in that township to execute the new applications for all lands therein, requesting all persons concerned to attend, and provide to have their business completed.

5thly. You shall execute every application to you directed, and make return thereof into the Surveyor-General's office, within six months after the date of such application, provided the persons who shall obtain the same, or some other person in their behalf, will attend and shew the land to be surveyed, and pay for surveying the same as soon as completed; but in case the applier, or some person for him or her, do not shew the land, and also pay the fees for surveying as soon as the same is done, or any other reasonable cause shall oblige you to delay the execution thereof, you shall enter your reasons for not performing the same on the back of the copies of such applications, and transmit an account thereof to the Surveyor-General, with all convenient speed; and you may observe by the regulations proposed in the Land-Office, that much will depend on the care and despatch of the deputy surveyor, and I desire the people may not have any cause of complaint of your neglecting their business. (Signed by the surveyor-general.)

On the 1st of August, 1766, the office was opened on the new plan, for the west side of Susquehanna, on the same terms as on the east side.

It had been the practice to survey large tracts of land upon warrants calling for but a small number of acres; fifty acres warrants were usual, and several hundreds had been returned on them; and warrants in general were permitted by this custom, to cover a large overplus. To restrain this practice, the following orders were issued.

April 13th 1767. Upon its being represented that many surveys are made, and making, which contain more land than the warrant or application specifies, the governor orders, that no surveys be received consisting of more than ten acres *per cent.* above the quantity specified in the warrant or application. (Minute book I. pa. 69.)

May 1st 1767. Upon the representation of the Surveyor-General, that great numbers of surveys had been returned, both on warrants and applications exceeding the quantities mentioned in the warrants or applications, and the ten *per cent.* allowed the surveyors to exceed; and at this time to cut off the excesses of those surveys, would, in a manner, put a stop to the business of the whole province. And it appearing that the sur-

vveyors have certified, that in many cases these excesses of quantity are to the advantage and interest of the proprietors, as they include land which by itself would probably never be taken up from its barrenness. The governor is pleased to order, that as to what is past, the Surveyor-General receive the returns of the surveys, though they should exceed the quantities mentioned in the warrants or applications, and the ten *per cent.* But that for the future, he strictly charge his deputies, that they shall not, on any pretence, return more than the quantity, with the usual allowance for roads, and the ten *per cent.* upon pain of being obliged, at their own expense, to rectify any surveys they shall return with such excess of quantity. (Minute book I. pa. 74.)

This latter order appears to be explicit and peremptory; yet it does not appear to have been rigidly adhered to in the letter; and in some instances was certainly departed from. Some allowance would naturally be made for the difference of surveys, as in former times. On a re-survey it might turn out a little more or less. It was to be observed, according to the latter instructions of the Surveyor-General "*as near as reasonably may be.*" The exact measure in every case might be impracticable in common experience. An acre, or a few acres, more, or less, could not possibly be the object, or be considered as a violation of the *spirit* of the rule; and common understanding and experience would, in a moment, be able to decide what ought to be considered an *accidental*, or *intended* departure from it. Should the mere circumstance, in running round a survey, of setting a course an half or a quarter of a degree too wide, and including an acre or more too much, be made use of to prevent the acceptance of a survey, the common feelings of the people would revolt at it; nor could the mere letter of any law justify the mischief, the inconvenience, and expense which would follow from the construction; and every law should be construed reasonably; as a good general rule, however, it has been adopted by the courts, which regard the customs of the Land-Office. But even the ten *per cent.* must be relinquished, where the interest of other purchasers would be affected by it. If an adjoining warrantee would be diminished in quantity, the elder warrant must be restricted to its quantity without any surplus, which can be retained only where it does no injury to others; and the first applier has no right to complain, if he gets what he purchased. The whole law, therefore, as far as it has been considered by the courts will appear in the following cases

The point was started in the case of the lessee of *Merchant and Bright v. John Millison*, before *Yeates and Smith*, justices, *Westmoreland*, November 1800. *MSS. Reports*. But the case appears to have gone on other grounds, and will be stated here so far only as connected with this subject, and introductory to other cases.

The plaintiff claimed the land under a warrant for 250 acres, dated 10th February 1786, on which 268 acres, and 155 perches, were surveyed on the 12th of April following, and a patent thereon 27th of October, 1787.

Jacob Millison, the father of defendant, on the 4th of December 1784, obtained two warrants, for 300 acres—each, calling for an improvement. One in his own name, on which interest was to commence on the 1st of March, 1780—the other in the name of his son Philip, interest to commence on the 1st of March, 1782.

The assistant of the deputy surveyor made a large survey on these warrants, of 900 acres, on the 26th of April 1785, but afterwards returned above 300 acres on each warrant.

The plaintiff's survey included some of the improved, and some of the best land in the large survey, by a supposed line, which was not marked, about fifty perches from defendant's house, leaving to defendant, a quantity of poor, thin land, on the back part of the survey.

Immediately after the plaintiff's warrant was taken out, *Millison* built a cabin on the lands in controversy, and retained possession of them. On the 23d of October, 1786, *Jacob Millison*, as administrator of his father, obtained a warrant for 200 acres, in trust for the heirs, and procured a survey of 220 3/4 acres, on the 12th of September, 1786, and a patent on the 12th of October, 1786—which included the lands in question.

Three surveyors were examined, who declared, that where there was no dispute, they found little or no difficulty, when they returned more than ten per cent. surplus, on surveys made by them since the Revolution. In some instances, 350 and 360 acres had been surveyed, and returned on warrants for 200 acres; and in some others, double the quantity of the lands mentioned in the warrants, and they had been all accepted.

Judge Smith, who, by reason of the indisposition of the presiding judge, delivered the charge, said, "I, however, for my own part, do not go so far as the witnesses, with respect to surveying, and returning surplus lands. I rather think the deputy was not obliged to make a return of so large a survey as 900 acres, under warrants for 600 acres; and that

the Land-Office was not bound by their usage, to accept so large a return. The first instructions to the deputy surveyors, not to survey more than a surplus of ten per cent. on each hundred acres contained in a warrant, took place in 1767, and arose from a desire to accommodate the different appliers with lands, and the fees of the different officers were regulated thereby. But when it was discovered that the proprietary institution might be evaded by taking out warrants in the names of other persons, the rule of practice still continued, though the reason of it had long before ceased. However, before the Revolution whenever the deputy surveyor certified, that the surplus lands beyond the ten per cent. were only desirable for the lands in the warrant, there was little hesitation as to the accepting of the return of survey of such surplus. I know of no rule on the subject. If the present contest rested merely on the point, whether 450 acres should not be returned on each of *Millison's* warrants, as a matter of right, I should incline against the defendant; but I give no decided opinion thereon. The practice of surveyors, since the Revolution, would have great weight."

The main question, however, was, whether taking the new warrant for the 200 acres, was not an abandonment of the first survey, and an acquiescence in the two returns excluding the land; and whether the defendant knew and consented to it; and if he did, the plaintiff's warrant must be preferred.—And it was said that the surveyor had no right to garble lands at his will and pleasure, and return what parcel he thinks proper; and that in an instance like the present he should have stated the contents of the first survey to his employer, and taken his directions therein. And it resulted to this, whether the assistant surveyor had been guilty of a legal fraud, or not? and the jury, under the circumstances, found a verdict for the defendant, with the approbation of the court.

So, in *Kyle's lessee v. White*, decided in 1808, in the Supreme Court, the defendant held under two warrants, dated 3d Feb'y, 1755, for one hundred acres, each, on which a survey of 562 1/2 acres was made on the 28th of November, 1760, but not returned, from accidental circumstances, into the Surveyor-General's office, until November, 1766.

Tilghman, C. J. In considering the objection as to the quantity of land, we must advert to the time when the survey was made. If made at this day, the objection would be decisive. But

1784. in the year 1760, when it was made, it was customary to include much larger quantities than the warrants called for. It was not until 1767, that this practice was altered by instructions of the governor to the surveyors. The plaintiff had notice of defendant's survey, before he took out his warrant. 1 Binney, 249.

And, in 1810, the case came before the Supreme Court, in the lessee of *Steinmetz v. Young*, under the following circumstances, on appeal from the circuit court, at York.

The plaintiff claimed under a warrant to *William Grouce* for 100 acres in the year 1751, founded upon an improvement. In October, 1761, *Grouce* conveyed to *George Stevenson* and *George Ross*, describing the property as "a plantation and tract of land, containing by estimation 300 acres more or less." A survey of 279 3-4 acres was made on the warrant by *T. Armor*, an assistant deputy-surveyor, on the 26th of Feb'y, 1764, which was never returned, and it was clear from the surveyor's field notes, that the survey was not correct, because 159 acres of it were included in another survey made three days before by *Aarmor*, for *Ross & co.* who were still the owners of *Grouce's* warrant. On the 9th of November, 1788, a survey of 287 acres and 137 ps. was made for the lessor of the plaintiff, on *Grouce's* warrant which he then owned, including but a small part of the first survey; and this was returned and filed in the Surveyor General's office, on the 16th of April, 1790.

The defendant, who claimed under a warrant for 60 acres, including an improvement, dated June 4th, 1802, interest to commence on the 4th March, 1790, which was offered in evidence, and overruled, but also waved, on plaintiff's consent to read it, contended that the survey of 1788, could not be maintained, in consequence of the orders of 1767; and because the act of assembly of the 8th of April, 1785, in effect imposed the same restriction, was in many respects a general law, extended to every part of the State, and was a direct obstacle to the acceptance of the plaintiff's survey, which no practice, or custom in the Land-Office could obviate; and cited *Kyle v. White*, where it is said, that if the survey in that case had been made at the present day, the objection founded upon its excess, would have been decisive.

The point reserved at the trial was, whether on the warrant for 100 acres, a survey of 287 acres, in 1788, could be accepted, and it was fully argued on this appeal.

Tilghman, C. J. delivered the judgment of the court as follows:

There is no doubt, but that prior to the year 1767, a survey of 300 acres might have been made on a warrant for 100; such was the practice of the Land-Office. But in the year 1767, the Board of Property made an order, that no survey should be accepted, containing more than ten per cent. surplus, above the quantity called for by the warrant, with the usual allowance of six per cent. for roads, &c. An act of assembly to the same effect was made in April, 1785; but as it has been expressly decided by this court, in the case of *M'Ginnis's* lessee, v. *Albright*, December, 1799 that this act does not extend to any part of the State, but that which lies within the last purchase of the Indians, it has no bearing on the present case.

Judge Smith, who had great experience in the business of the Land-Office, and was himself a deputy-surveyor before the Revolution, mentions, in his charge, that he had himself surveyed 400 acres, on a 300 acre warrant, after the year 1767, which had been accepted, the party paying for the surplus; and that he knew of no instance, where a survey, containing more than ten per cent. surplus, had been rejected by the Land-Office, if it did not interfere with the rights acquired by others, before the return of the survey. It is certain that the proprietary officers were in the habit of sometimes dispensing with the general rules of office, where no injustice was done by it; and it is a striking feature in the present cause, that in the year 1761, *Grouce* considered himself as intitled to 300 acres on this warrant. At that time he might have had his 300 acres surveyed; and if it was understood in the neighbourhood, that he meant to take 300 acres; or there were any lines, or marks, by which notice was given of the extent of his claim, I think it highly probable, that the proprietary officers would have accepted a survey for 287 acres, after the year 1767, provided he had stated, his case to the Board of Property, and made it appear, that no other person had acquired an interest in the surplus. The acceptance of such a survey was a matter between the warrantee and the proprietaries. No third person could be injured. Nor has the present defendant the least particle of equity in his case. What is it to him whether the plaintiff had more or less land included in his survey?

I have endeavoured to ascertain the practice of our own Land-Office, since the Revolution; and it appears that many surveys have been accepted, made since the year 1767, on old warrants, containing more than ten per cent. surplus. Considering all the circumstances of this case then, without laying down any general

rule, it is my opinion, that the return of the plaintiff's survey, which was filed in the Land-Office, before any other person had acquired a right, and to which no objection was made by the Surveyor-General, gave him sufficient title to recover in this ejectment. Judgment affirmed.

But all the cases recognized the principle, that if a third person should be injured, or there should be an intervening right before the survey made, though on a younger warrant, the first warrant will not be entitled even to the *ten per cent.* surplus, if it would thereby deprive the second warrant of any part of its quantity.

Thus, in *Elliott's lessee, v. Bonnet*, twice before cited, the judge concluded his charge to the jury, thus, "If the jury shall decide for the plaintiff, the only remaining thing to be considered, is, what ought he to recover? He has got under the warrant to *Croyle*, including his improvement, 123 acres, and 123 perches; and there being another legal right in the hands of the surveyor (though posterior to *Croyle's* application) before the survey was made, he is now intitled only to 176 acres, and 57 perches; the difference between what is already surveyed to him, and the strict quantity of 300 acres, under his improvement, and not to any surplus quantity of *ten per cent.* and that finding for the *ten per cent.* might possibly endanger their verdict.

And in the lessee of *Gripe v. Baird, Huntingdon, May, 1805*, before *Yeates and Smith*, Justices, MSS. Reports. The rule was thus recognized, "That under the order of May, 1767, the deputy-surveyors were not to return more than *ten per cent.* beyond the usual allowance for roads, on the quantity of lands contained in the application or warrant; but this only held when there was no conflicting right when the survey was made; for in such case the deputy was not permitted to exceed the quantity called for with the allowance of *six per cent.* for roads. This was equal justice, and conformable to the settled practice of the Land-Office. It had been pursued in the circuit court, at Bedford, in November, 1801, in *Elliott's lessee, v. Bonnet*, where the jury were strongly disposed to find the surplus of *ten per cent.* for the plaintiff.

On the fourth item of the second set of instructions to the deputies, before noted, the following case has occurred.

Lessee of *Bear v. Russel, Northumberland, October, 1796*, before *Yeates and Smith*, justices, MSS. Reports.

An application was entered, on the 3d of April, 1769, No. 164, in the name of *John M^cGrath*, for 300 acres of land, on the south side of the west branch of *Susquehanna*, about 25 miles from *Fort Augusta*, concluding a bottom called *Oughbough-pockeny*.

A survey was made thereon, by *Charles*

Lukens, of 330 acres and allowance, on the 26th of June, 1769, which contained a front of 902 perches on the river.

Caveats were filed against the return of this survey; and on the 26th of March, 1770, the Board of Property, on the claims of *John Stephens*, *John Montgomery*, and *John Morgan*, against *William Plunket*, (who obtained a transfer of *M^cGrath's* location on the 21st of March, preceding,) decided, that the narrow bottom on the river should be divided by *Charles Lukens* and *William Scull*, into as many tracts as it would allow of, taking in as much of the back lands as were fit to be taken up, or as the parties should be willing to take into their surveys; and that it should stand over, until the matter should be decided between *Stephens* and *Plunket*, as to *Plunket's* location. A patent, however, issued to *Plunket*, on the 17th of August, 1774, and on the next day he mortgaged the lands to the trustees of the general Loan-Office, to secure the payment of £. 200, and interest, on the 22d of April, 1793, the lands were sold by *Flavel Roan*, sheriff, (the mortgage money being unpaid,) to the lessors of the plaintiff, for £. 811.

The defendant held as tenant, under the heirs of *John Montgomery*, who entered an application on the third of April, 1769, No. 916, for 300 acres, on the west branch of *Susquehanna*, upon the south side of the said branch, opposite the lower end of the proprietaries survey, upon a small run on the river, opposite to the upper end of *Muncy hill*.

It appeared in evidence, that the defendant's location described the lands in question, and that if *Plunket's* survey had been bounded by the run therein mentioned, it would have excluded the controverted grounds. There was a long narrow bottom of excellent land along the river; the grounds back were arable, and fit for cultivation, though being *Pine Barrens*. They were of much inferior quality to those in front of the river. Application was made in June, 1769, to *Lery Stevens*, who surveyed under *Charles Lukens* to make the survey for *Montgomery*. He promised to do it, and return the lands above the mouth of the run for him, and a large walnut tree there, was afterwards fixed as a corner of his survey; but the promise was not complied with.

Notice was given at the sheriff's sale, of *Montgomery's* claim.

Yeates, J. being one of the executors of *S. Chambers*, who claimed part of the land, declined taking any part in the decision.

Smith, J. I feel no difficulty whatever, sitting alone in this cause. It is so plain that it cannot be perplexed. The instructions formerly given to deputy-surveyors, and their usage, will readily determine the dispute between the parties.

1784.

He then mentioned the 4th item of the instructions, before given at large.

If there were no other warrants or applications than those they were executing, they assumed greater liberties; and if, in such instances, they gave a larger front on a river, or creek, than their instructions admitted, and their surveys were accepted, no injury was done, and no one could reasonably complain. The proprietaries might, in such a case, dispense with their usual rule, and grant their lands as they pleased. But where there were other rights, though subsequent in point of time, which also called for execution, the due proportion of front on the water, and extent back, ought, in justice to be adhered to. To deviate from the established rule under those circumstances, would do manifest injustice to third persons. I will not say, that in practice, the surveyor is restricted to one, or even two perches beyond his directions, where the situation of the grounds calls for a latitude in judgment; but I will assert, that to go 902 perches, by the margin of a navigable river, and where the lands back are of a quality proper for cultivation, to fill up an order for 300 acres, is altogether unprecedented, and unwarranted by any law or usage, where it would operate against the rights of others. By such improper practices, in garbling the whole of the lands of the first quality, the settlement of the country is retarded, besides doing essential injustice to individuals.

There was accordingly a verdict for defendant. But on the erection of *Lycoming* county, in which the lands now lie, the controversy was renewed; but it has since been compromised.

When the Land-Office was about to open for the lands purchased in 1768, the following advertisement was published for general information.

Advertisement.

The Land-Office will be opened on the third day of April next, at ten o'clock, in the morning, to receive applications from all persons inclinable to take up lands in the new purchase, upon the terms of five pounds sterling per hundred acres, and one penny per acre, per annum, quit-rent. No person will be allowed to take up more than three hundred acres, without the special licence of the proprietaries, or the governor. The surveys upon all applications are to be made and returned within six months, and the whole purchase money paid at one payment, and patent taken out within twelve months from the date of the application, with interest and quit-rent from six months after the application. If there be a failure on the side of the party applying, in ei-

ther procuring his survey and return to be made, or in paying the purchase money, and obtaining the patent, the application and survey will be utterly void, and the proprietaries will be at liberty to dispose of the land to any other person whatever. And as these terms will be strictly adhered to by the proprietaries, all persons are hereby warned and cautioned, not to apply for more land than they will be able to pay for, in the time hereby given for that purpose.

By order of the governor,

JAMES TILGHMAN,

Secretary of the Land-Office.

Philadelphia, Land-Office, Feb. 23, 1769.

N. B. So long a day is fixed, to give the back inhabitants time to repair to the office.

At a special meeting at the governor's, on Wednesday, the 25th day of January, 1769, previous to issuing the above advertisement, present, the governor, Mr. Hamilton, the Secretary, Mr. Tilghman, Auditor-General, Mr. Hockett, the Receiver-General, Mr. Physic, the Surveyor-General, Mr. Lukens. The Board, assisted by Mr. Hamilton, took into consideration the terms on which the office should open for the late new purchase, and are of opinion that the application plan in general be continued, but are of opinion, that there should be some alteration as to the time of returning the surveys, and paying for the land, and taking out patents, which is referred to further consideration.

It appears by the advertisement above, that no alteration was made as to the time of surveying and patenting; nor was the limited period, in either of the purchases, or under previous warrants, either as to surveying, or patenting, ever, generally regarded by the people. They were indulged from time to time. As to the proprietaries, no forfeitures were insisted on; and by various proclamations and advertisements, after the respective periods, any forfeiture may be presumed to have been waved, by demanding the performance of the terms or conditions. And on the 25th of April, 1774, by a notice, which is filed in the Surveyor-General's office, it is stated, "That as the several deputy-surveyors, propose giving due attendance in their respective districts throughout the province the present summer, all persons who have entered applications for land, and have not got them surveyed, are hereby desired to attend the deputy-surveyor, in whose district the land may be, shew the same, pay the charges of surveying, in order that the same may be returned

into the Surveyor-General's and Secretary's offices, in order for patenting (agreeably to an advertisement lately published by the Secretary of the Land-Office.) By order of his honour the governor.

JOHN LUKENS, *Surveyor-General*.

But as it concerned the people themselves, a new doctrine necessarily arose out of this state of things, which will be considered in its order. Where surveys were not made in a reasonable time, without confining it to the six months, a principle has grown up, which may be termed a *constructive* abandonment of an inceptive right to land. An actual intentional abandonment, it would not be in one case out of a thousand, and the law itself has been declared upon the active pursuit of the claim, when, after the presumed abandonment, other rights have been fixed. This doctrine was essential to the settlement of a new country. But when the survey was duly made, the principle would not apply; no one would be deceived; the land could not be considered as vacant, and unappropriated, and any neglect in perfecting the title was a matter solely between the proprietaries, and the holder of the warrant, or application, with which, third persons, who were not injured, had nothing to do.

It will be observed, further, that there are several marked distinctions between the *applications*, of 1765 and 1766; and the *applications*, or *locations* of 1769. In the first, it was an immediate application, and direct grant of the land, on a new plan to be sure, but claiming priority from the time of application; and they were numbered as they came in. But the locations of the third of April, 1769, (for there were many before and after that day, which did not fall within the rule,) were *contingent*; they were lottery tickets, and many of them were to draw blanks. Applications, or locations were admissible, and were received, for the same spots of land, from different persons, under various, or similar descriptions. They were not numbered as delivered, but received their number and priority, by the chance of a lottery.

The settlement system could have no operation; (except on one particular line of the purchase under peculiar circumstances, which were provided for.) The lands had been purchased but a few months preceding from the Indians; settlements, or improvements thereon were illegal; nor could any settlement have been made, with any effect, in the winter season, between the

purchase, and the time of opening the office. All equitable circumstances were therefore out of the question; the chance was equal to all; and any attempt to obtain a preference, by cutting a few trees, under the misapplied name of an improvement, would have been a *fraud* upon the adventurers in the lottery, and could not, justly, be entitled to any preference.

Preferences, however, there were previous to opening the office; and to a very considerable extent, of the choicest lands. One of the inducements to the purchase of 1768, was the accommodation of the officers of the provincial regiments, who had served during the Indian campaigns, and were desirous (as they represented,) to settle together. One hundred and four thousand acres were appropriated for this purpose; 24,000 of which quantity were for the benefit of the officers of the first and second battalions. Large preferences were also given to individuals. These were called special grants, and were excepted out of the lottery. The officers' lands, proprietary reservations, and special grants, a few instances excepted, were surveyed and appropriated previous to opening the office; and so notoriously done, as to prevent any deception on the people, who of course avoided these surveys in the descriptions of their locations.

Every thing was therefore prepared for opening the office on the day appointed; the plan was finally adopted, and notice given of it. This plan forms the heading of the book of locations, and the locations follow it, in the order in which they were drawn and numbered; each number containing the precise description.

"The third day of April, 1769, being appointed for opening the Land-Office for the new purchase made at the treaty of *Fort Stanwix*; and it being known that great numbers of people would attend ready to give in their *locations* at the same instant, it was the opinion of the governor, and proprietary agents, that the most inexceptionable method of receiving the locations, would be to put them all together. (after being received from the people,) into a box, or trunk, and after mixing them well together, to draw them out and number them in the order they should be drawn, in order to determine the preference of those respecting vacant lands. Those who have settled plantations, especially those who settled by permission of the commanding *Beers*, to the westward, were declared to have a preference. But those persons who had settled, or made what they call im-

1784. improvements, since the purchase, should not thereby acquire any advantage.

The locations, (after being put into a trunk prepared for the purpose, and frequently well mixed,) were drawn out in the following order, by an indifferent person."

As the owners of the locations, in a great number of cases, made use of other names than their own, it was common to endorse the list given in, with their own names. This circumstance, and the hand-writing in the body of the location have frequently been considered as of importance; and have, more than once, decided the right to the land against the nominal locator.

In taking leave of the proprietary regulations, and before we come to consider the legal effect and operation of all that has preceded, it may be necessary to observe, that notwithstanding the terms of the advertisement of June, 1765, warrants continued to issue, upon improvements, and for lands adjoining improvements, or old surveys; and applications were adhered to only where improvements were not certified. But warrants did not issue for lands in the new purchase until after 1772, or in some part of that year; and when the warrants were there introduced, and at the same period elsewhere, it was generally the practice to pay the whole purchase money at the time of the warrant being granted.

A great mass of property in Pennsylvania is held, by what is called an equitable title; that is, where, the purchase money being unpaid, no patent has issued. It was necessary therefore, to recognize this kind of title, as sufficient to support an ejectment. Originally, however, a different opinion prevailed; and the change in the practice can be collected from the following case.

Lessee of *Patrick Campbell* and others v. *Lear*, Dauphin, October, 1796, before *Yeates* and *Smith*, justices, MSS. Rep. Ejectment for lands in Derry township.

It appeared in evidence, that *David Campbell*, on the 28th of May, 1748, took out a warrant for 200 acres, including his improvement, the interest to commence March 1st, 1739. He also paid £.10, on that day, into the Receiver-General's office. He died intestate, on the lands in 1758, leaving *Susanna*, his widow, and several issue, now lessors of the plaintiff, who were all young at his decease, but their ages were not ascertained. His stock of creatures were sold shortly after his death. There was proof by the acknowledgment of the eldest son, that at the time of his death he owed one bond of £.50.

The interest of the intestate, in the lands, was sold by the widow, and *John Byers*, her brother, at public vendue, for £.140.10s. And they executed a bill of sale thereof, to Robert Taylor, and others, and also an assignment of the original receipt for £.10, both bearing date on the 11th of May, 1758. The whole premises being afterwards vested in Taylor, were conveyed, on the 1st of January, 1761, by his administrators, in pursuance of a sale directed by the Orphans' court, to *John Sterling*, under whom, by several mesne conveyances, the defendants made title.

Byers and his sister were dead. No letters of administration to them were shewn in evidence, but their bill of sale styled them administrators. Nor were any inventory, or administration account shewn to the court, or search made for them.

The counsel for the plaintiff admitted, that formerly equitable titles to lands, under improvements, and even warrants and surveys, were considered as personal property, appraised as such in inventories, and settled in administration accounts, without any orders of Orphans' court, empowering the administrators to sell; or, in the case of wills, without any authority from the testators.—But they contended, that this usage ceased in 1753 or 1754, and consequently, that the sale made by the administrators in 1758, was not protected thereby.

The court, after stating the titles of the contending parties, observed there was a considerable interval, during which equitable titles to lands were not viewed in the same light as at present. It was not then supposed, that ejectments could be supported on the grounds of an improvement, warrant, or survey, the legal title being in the proprietaries. Amongst some of the first instances, in this court, of a different practice, may be reckoned the case of the lessee of *George Sprengel* v. *George Stevenson*, at York, May assizes, 1772.

In more ancient times, such equitable claims to lands were ranked as mere chattels, and sold as such by executors, without powers in the wills, and even by executors in their own wrong, and by administrators without the intervening orders of the Orphans' courts. Such sales formerly made, *bona fide*, for payment of debts, or maintenance of minor children, have frequently been sanctioned by courts of justice. A determination on this very point was had at Lancaster, June assizes, 1792, between *Means's* lessee v. *Flora*, by *McKean*, C. J. and in many other cases before the war.

The titles to many valuable estates

depend on sales of this nature, and it would be highly inconvenient and dangerous now to impeach them. The custom of the country of that day, was *usitata et approbata*, and became the received law. Indeed the law itself has been said to be nothing but common usage.

But the plaintiff's counsel insist that this usage ceased in 1753 or 1754.—We apprehend this not to be the fact. In *Duncan's lessee v. Walker*, determined in bank, January term, 1793, the court expressed themselves, that improvements made, *animo residendi*, and even warranted and surveyed lands made *thirty-five years ago, or thereabouts*, were generally considered as chattel interests, and appraised as such in the inventories of deceased persons, &c. The verdict was for the defendant, but the residue of the case more properly belongs to another branch of the law.

The practice of bringing ejectments has now become settled law, though the legal title is in the commonwealth; the custom of the country is, in this respect, *usitata et approbata*, and is recognized and adopted in the supreme court of the *United States*, in *Sims's lessee v. Irvine*, 425-466.

And, in the *Lessee of Paxton v. Price Bedford*, April, 1795, before *M'Kean*, C. J. and *Yeates*, J. MSS. Reports. It was said by the court, on an objection to the evidence, That such inchoate rights as applications, have been frequently transferred by mere blank indorsements. The strict forms of conveyances have not been applied to such imperfect rights; and in the case of improvements, it is well known, that the sale of them has been proved by parol.

So, in the *Lessee of Lynn v. Downes*, at *Foyette*, May, 1795, before the same judges, MSS. Reports. *Thomas Downes*, filed an application for 300 acres of land, including an improvement, on the 3d of April, 1769.—He made his will in 1778, and devised the land to his widow and children. The only part of the case material to the present question, is as follows:

On the 21st of October, 1788, the widow and executrix, and three of the children, convey their shares and interests to *Benjamin Brashiers*, and his heirs, in consideration of 20s. an acre; and on the 28th of March, 1789, *Brashiers*, by an assignment, endorsed on the former bill of sale, "Sells and transfers all his right, title and interest, in the within writings, to *Andrew Lynn*, (father of lessors of the plaintiff,) for value received," without using any words of inheritance therein.

It was contended for defendant, that

Brashiers' deed, containing no words of inheritance, passed no more than an estate for life to *Lynn*, which was now spent; and therefore the plaintiff shewed no title to the lands. The rule of law was so clearly settled, that in deeds the word "*heirs*" was so indispensably necessary to vest an estate in fee simple, it could need no animadversion.

But, by the Court. The operation of applications and surveys thereon, is best explained by the usage of the state; and as that usage alters, so will the law. No such titles are known in *England*, and the strict rules of law there, are inapplicable to our system. An application is the mere inception of a title, on which no more is paid than 7s. 6d. the mere office fees of entering it. It vests a mere equitable interest in the party, the legal estate remaining in the commonwealth in trust. The right is eventually completed by obtaining a patent.

We have often seen, that rights under applications and warrants, have been assigned by blank endorsements, and that the sale of improvements has taken place by payment of money, or the delivery of a specific article by way of consideration; and such transfer and sales have always been established. This point was resolved at *Bedford*, during our present circuit, in *Paxton's lessee v. Price*.

In the instance before us, the subject matter must be considered; and *Brashiers'* assignment conveys to *Andrew Lynn*, all his right, title and interest, in the *within* writings. It refers to the other conveyance, on which it is endorsed.

The intention of the parties is clear. The title passed for a valuable consideration, and the money paid, raises an use, which chancery would carry into execution. It operates as a statute conveyance; and we apprehend, that the vendor would be considered as a trustee for the vendee, and consequently, that all his equitable interest passed to the ancestor of the lessors of the plaintiff. Verdict for plaintiff.

And in *Lovrey's lessee v. Gibson*, before cited, it was said, that even warrants might pass by parol.

And a devise of an improvement, in 1745, without words of inheritance, held to vest a fee. *Lessee of Green v. Creamer*, Supreme Court, December, 1798, MSS. Reports, S. C. 3 Dallas, 477.

A location entered by one person in the name of another, such nominal person is to be considered as a trustee for the person who made the entry.

Thus, in the *Lessee of Cornelius Cox v. Thomas Grant, Northumberland*, May, 1792, before *M'Kean*, C. J. and *Yeates*, J.;

1784. Both plaintiff and defendant claimed under the same location, entered in the name of *Thomas Grant*, dated 3d of April, 1769. It appeared in evidence that the location was put into the office by Alexander Grant, father of defendant, in his name, and that he was then eleven years old; that the lands were taken up by the said Alexander and Cornelius, in partnership; and, that sometime afterwards, during the minority of his son, Alexander Grant agreed to sell to Cox the other moiety of the land for £.20, part of which was paid: Cox continued in possession; he had paid the surveying fees. Alexander Grant obtained a judgment against him for £.9. 8s. and issued a *fi. fa.* returnable to August, 1773, upon which these lands were levied as Cox's property.

By the Court. We must take notice of the usual practice which has prevailed in the country, to obtain a title to lands from the late proprietary officers. The rule which obtained amongst them, that a person should not be permitted to take out a warrant, or location for more than 500 acres of land, was probably first introduced to prevent the ingrossing of real property, and was perhaps continued afterwards for the emolument of the officers. But we well know, that, in general, the name in the location was merely nominal, and used as a kind of scaffolding for building up a formal and regular title. The person whose name was used stands as a mere trustee for him who took out the warrant, or entered the location, and paid the surveyor, or other officers. The latter is the *cestui quise*. It has been long settled, that one purchasing lands in the name of another, and paying the money, it is a resulting trust. (See 1 P. Wms. 321. 1 Wils. 21. 1 Eq. Ca. abr. 380. 2 Eq. Ca. abr. 744. 1 Atk. 60. 2 Atk. 150.) Here Alexander Grant made use of his son's name, merely for the purpose of obtaining the title, and having sold to the plaintiff, his sale must be established.

And in *Fogler's lessee v. Gobach*, Dauphin, October, 1796, (MSS. Reports,) Smith, J. held the same doctrine. He said it had always been understood in Pennsylvania, that one entering a location in the name of another, it shall enure for the benefit of the party applying, without other proof. So, in the case of the father making application in the names of his children, it shall be presumed to be for the use of the father. The practice of the proprietary Land-Office first introduced this system of taking up lands, and the effects of it have been generally understood. But as this trust is founded on mere presumption, I think it may be repelled by evi-

dence of the contrary reputation of the country being opposed to it in particular instances. (1 Ld. Raym. 311.)

Of the law respecting improvements.

This subject has been already noticed. From the peculiar circumstances attending the settlement of a new country, it has at present grown into importance. Though singular in its origin, it has gradually grown into a system, which has been moulded by time and common sense into an intelligible and reasonable branch of settled law. It may hereafter form a striking feature in the history of property; but in times not very remote it must inevitably become obsolete in practice and use. As in the country from which we derive the principles of our laws, it is no longer necessary to enquire whether some powerful baron acquired the possession of a manor or a castle, by the grant of his sovereign, or by force, or by fraud; so, in the course of time it may be altogether unnecessary to enquire into the particular origin of our titles.

An attentive examination of the minutes of the Board of Property, commencing in the year 1765, will shew the great consideration shewn to improvements by the proprietaries themselves; and a variety of instances appear in which regular warrants and applications have given way to mere improvements without other title.

The first judicial report we have on this subject, is the lessee of *Patrick Campbell v. Benjamin Kidd*, at Carlisle, Cumberland County, June 1774, before Chew, C. J. and Morton, J. (MSS. Rep.

Thomas Orbison settled on the lands in dispute, in 1748, cleared 14 acres, built a cabin and barn thereon, and otherwise improved the same; that in doing this he was not in the least obstructed by the neighbours having interfered with the lines, or claims of none of them; and that on the 21st of Feb'y, 1750-1, he sold his improvement to *John Gilmore* for £.20. *Gilmore*, on the 26th of May, 1753, sold the improvement to the lessor of the plaintiff for £.60, who continued in possession of the same, until his house was burnt by the Indians in 1759.

This evidence was objected to. It was said, the improvement offered on the part of the plaintiff can give him no legal title, without acquiring some right under the proprietaries. They are the owners of the soil, and unless they grant away the lands, no improvement thereon, or settlement by consent of a neighbourhood, can give a

right. The title, if it can be termed one, is founded on a trespass, from which the plaintiff can derive no benefit, either in law or equity. Besides, more lands are claimed by the plaintiff than what he has actually improved and settled on, and the ejectment is brought in consequence of such claim. Can he recover the adjacent wood land under his claim? And how shall his claim be restrained within proper bounds? The defendant's counsel therefore moved for a nonsuit, and cited 1 Burr. 119. Plaintiff in ejectment must have both the right of possession, and the right of property, Buller 108. If defendant prove the title out of the lessor of the plaintiff, it is sufficient for him.

For the plaintiff, it was said, that this province, and particularly the more remote counties, owe their present flourishing state to the doctrine of improvements. The original proprietor, Mr. Penn, gave general invitations, throughout Europe, for adventurers to come in, and settle on his lands. And the proprietary officers have uniformly encouraged improvements since the settlement of the province; and have constantly given the pre-emption of improved lands to the first settlers, or to those who claimed under them. The people, therefore, justly considered this preference as due to improvers, and the conduct of the proprietors establishes the custom as the law of the land. The rigid rules of law which have obtained in England respecting real property, cannot be applicable, in every particular, to the circumstances of this province. Such principles would be similar to those of the unskilful physician, who prescribed the same medicines to different disorders and constitutions. Should we judge by the rules of the English constitution, the titles of many very valuable tracts would be destroyed for want of naturalization in the original grantees, many of whom were foreigners. It is agreed there is a wide difference between improvements made since the Indian purchases made in 1736, and 1754, and that in 1768. In the lands granted by the latter, it is acknowledged on all hands, that improvements give not the shadow of title. The advertisement issued from the Land-Office, and the opening that office shortly after for the benefit of appliers, must clearly take away any pretence of improvements founding a title to lands bought in 1768. But the case is different with the other purchases. The Land-Office favoured improvers of these lands, and gave a tacit consent to settlements made ac-

cording to the usage of the country. Persons obtaining warrants could not lay them on improved lands; they were considered as "appropriated."

Old improvements have been sanctified by the adjudications of courts of justice. At *Northampton*, at March term, 1769, in *Hoover's lessee v. Shreeder*, the plaintiff recovered under a mere improvement, though the doctrine now contended for was then warmly pressed. An improvement was established, and took place of a patent, in *Myers' lessee v. Hefflinger*, at *Nisi Prius*, at *Lancaster*, in November, 1768; and at *Nisi Prius*, at *York*, May, 1772, in an ejectment brought by *George Sprenkel v. George Stevenson*, an improvement was given in evidence on the part of the plaintiff, though made within the reputed bounds of *Springetsbury manor*; and this, too, against a patent, accompanied with a long possession. Numberless are the cases wherein this doctrine has prevailed in the different courts of Common Pleas.

An ejectment is a possessory action; and it is settled, that one having a right of possession may recover in such action, though the title may appear in a third person. *Vaughan* 239. *Cro. Eliz.* 322, 438. *Cro. Jac.* 437. *Cro. Car.* 58. 1 *Wils.* 72, 272. 2 *Wils.* 338-9. They also cited 4 *Rep.* 26, a. b. Lessee of copyholder for a year may maintain an ejectment against a stranger, under the custom. *Cro. Car.* 169. Lands may be appertaining to a messuage.

By the Court. There is a *jus proprietatis*, and a *jus possessionis*. One having the latter right, may, in some instances, recover in ejectment, though he has not the legal title, as in the case of a disseisor before a descent cast. Did the dispute concern improved lands only, the plaintiff should recover the possession. For improvers of lands purchased of the Indians in 1736 and 1754, under circumstances similar to the present, have the most equitable claim to a confirmation of their titles. The encouragement given by the proprietors and their officers to improvements, have clearly expressed their assent to the usage, and is such a sanction as amounts to an implied contract on the part of the proprietors, that they will grant the lands to such persons on the usual and common terms. Were the proprietors to refuse the terms so offered to them by an improver, chancery would decree a specific performance against them. It is certain, however, that a right to improved lands will not carry an indefinite claim to adjacent, unimproved lands. The grand difficulty here, will be, admitting the improvement offered

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to the jury on the part of the plaintiff, to found an equitable title to the improved lands, whether that title should also prevail as to unimproved circumjacent land, necessary to accommodate the improvement, and to be ascertained by a jury; or whether such woodland should be determined by the proprietary officers, and be solely judged of by them?

Though the granting lands to improvers be highly agreeable to the principles of reason, and natural justice, yet, *stricto jure*, such improved lands, until an office right is obtained, may be considered as vacant. The term "appropriated" in warrants, does not relate to improved lands, but rather seems to refer to lands surveyed for the use of the proprietors. The distinction between improvements made since the three Indian purchases, has been well taken by the plaintiffs' counsel. To lands granted under the first two purchases, the *bona fide* improver has an equitable title. Under the latter, an improvement can give no preference, or shadow of title. If an improver of lands in England, when entered on by another, cannot recover the possession from the wrong-doer, the title being in a third person; yet in this province such a one surely may, and ought to have relief from the peculiar circumstances and settlement of the country. In this case the possession of the plaintiff should be the sole object of the jury. Verdict for plaintiff—and the court ordered that his counsel should have liberty to move the court at the day in bank, to give evidence (if they think it regular and proper) of the practice of the country and Land-Office, with respect to the *quantum*, or proportion of adjacent unimproved lands, properly claimable, or grantable under improvement rights.

The doctrine of improvements was most fully considered as well by the court, as the counsel, at *Nisi Prius*, at Washington, May, 1795, in *Howard's* lessee v. *Pollock and Burk*, before *McKean*, C. J. and *Yeates*, J. (MSS Reports)

Matthew Karr made a small improvement on a plantation in 1768, by deadening a few trees, and making some brush heaps. In the succeeding year, *Joseph Proctor* came up, and settled near him. Some differences arose between them; but at length they mutually fixed on a line between themselves, and agreed that it should be marked. This was accordingly done, and *Proctor* built a snug cabin, cleared six acres of land, lived thereon two years, and raised grain during that period. He then sold his improvement to the lessor of the plaintiff for £. 30, who possessed himself thereof, and lived thereon three

years, until he was driven off by the savages.

Karr sold his improvement to one *Charles Burkbann*, who again sold to *Pollock*, one of the defendants; *Burk* is the tenant of *Pollock*. It was offered to prove the *consentable* line shewn by the two original settlers, by several witnesses, and to establish that *Pollock* knew of this boundary when he purchased, and that he was forewarned not to go over it.

Exception was taken to this testimony.

The plaintiff must recover according to his title at the time of the demise laid in the declaration, which is on the 2d of October, 1780. If his title then was not good, it shall not defeat the equitable title of defendant, by improvement, aided by a warrant dated 20th of January, 1785, and a survey made on the 17th of February following, before the commencement of the suit.

Whatever effect subsequent laws may be supposed to have on the doctrine of improvements, they cannot affect the present question, which must be judged of by the existing law of 1781, (chap. 929.) It is also remarkable, that the act of 30th of December, 1786, (chap. 1248,) recites, that settlers were not secured in their pre-emption rights, by the law of 1st of April, 1784, and affords them a temporary advantage, which has since been continued by subsequent acts. If under any previous law, or established custom, the titles of improvers had been fixed and ascertained, there could have been no necessity for passing this act.

It was answered by the plaintiff, that though he conceded he could recover only according to his right at the time of the feigned lease; yet different acts of the legislature, expressive of their sense of improvements, had shewn in what light real settlements should be viewed, and were declaratory of former established usages. It was not meant to carry the improvement doctrines to the wild extremes to which they were brought shortly before the Revolution; but that a *bona fide* improvement, made *animo residentis*, pursued in all its stages, and never abandoned, had certain benefits annexed to it from the uniform practice of the Land-Office, and of courts of justice, was now the generally received opinion of the western country; and it was apprehended, these advantages were sanctified by divers laws of the state.

The state of *Virginia* recognized by a municipal regulation of May 3d, 1779, actual settlers, "who had made a crop of corn, or resided on the lands for one year before January 1st, 1778," as freeholders of that commonwealth, and entitled to the farms they occupied, not exceeding 400 acres. An unfair advantage would be had against the *Pennsylvania* settlers, particularly those near the disputed territory,

unless a similar doctrine was extended to them also. The public advertisement, on opening the Land-Office for the new purchase, on the 3d of April, 1769, commonly called the preamble to the lottery, explicitly declares, that "Those who had settled plantations, should have a preference."

The act of 1st of April, 1784, opening the Land-Office, states, in sect. 1, the equal justice due to all persons holding lands, that they should have equal opportunities of completing their titles; and in sect. 3. directs that each applicant shall produce a certificate, specifying whether the lands are improved, or not, that interest may be charged accordingly.

The funding law of the 16th of March, 1785, (chap. 1126,) directs that improvements shall be subject to taxation, and thereby recognizes those claims.

The limitation act of 26th of March, 1785, (chap. 1134,) declares, that no persons claiming lands in consequence of any prior settlement, improvement or occupation, without other title, shall recover the same, unless they have had the peaceable possession thereof within seven years before action brought; with a proviso, in favour of persons driven from their possessions by the savages, &c. Now it is evident, that here is a necessary implication from the words of the law, that an ejectment may be maintained under a prior settlement, improvement, or occupation, where there has been a possession within seven years next before the commencement of the suit, by the party, his ancestors, or predecessors.

As to the argument drawn from the penning of the preamble of the act of 30th of December, 1786, it may be obviated, by considering that it arose from the abundant caution of the legislature, and from some former decisions at law.

By the Court. Cases of improvements depend on a great variety of circumstances, all of which must be taken into consideration by a jury. The practice of the late proprietary Land-Office, and divers laws since the Revolution have annexed to them certain claims; so that they may be now classed among the *imperfect rights* to lands. It is a matter of fair argument, when the testimony is given, what will be its operation. We will therefore hear the evidence. It is a more favourable case than improvements generally are, there being an agreed line between the parties, if the plaintiff should bring home the knowledge of that fact to Pollock, before he purchased. The jury found a verdict for the plaintiff; and established the agreed marked boundary.

Besides the laws cited, see the act for raising 5,700,000 dollars, passed 10th of October, 1779, (chap. 855,) which declares, in sect. 11, that lands held by

improvement, are thereby made taxable.—Act for emitting £. 500,000, in bills of credit, passed 7th of April, 1781, (chap. 928,) which enacts, in sect. 7, that, together with the guarantee of the state, so much as shall be sufficient of the arrears due for land, granted, or claimed by virtue of warrants, locations, surveys, or any other title, that might be deemed good and valid, according to the law, custom, or usage in force under the late government, shall be pledged as a fund out of which the said bills of credit shall be redeemed, &c.—Act passed 5th of April, 1782, (chap. 953,) instituting a Board of Property, to hear or determine in all cases of controversy touching escheats, &c. *rights of pre-emption, promises, imperfect titles*, or otherwise, which may arise in the Land-Office.—Act passed 12th of March, 1783, sect. 6, (chap. 996.)—Act passed 22d of April, 1794, (chap. 1755,) sect. 2, directing that no warrants shall issue after 15th of June, 1794, for the lands therein mentioned, except in favour of persons claiming under some settlement and improvement.—Act passed 22d September, 1794, (chap. 1773,) sect. 1, declaring, that after passing of the law, no applications shall be received in the Land-Office, for any lands, except such, whereon a settlement has been, or thereafter shall be made, grain raised, and a person or persons residing thereon.

In the Lessee of *Smith v. Brown, Fayette*, May, 1795, formerly cited, on the point of the note respecting *Virginia* certificates of settlement, *McKean, C. J.* in his charge to the jury, on the improvement point of the case, observed, that "To give an improvement any equity whatever, it must not have the smallest cast of an abandonment.—So wild and extravagant have been the notions of many people about improvements, that it is not easy to define them. In the language of the act of 30th of December, 1786, (chap. 1248,) it is understood to be "an actual personal, resident settlement, with a manifest intention of making it a place of abode, and the means of supporting a family, and continued from time to time, unless interrupted by the enemy, or by going into the military service of this country during the war."

The chief justice then proceeded to give an account of the origin of improvements, and the state of the Land-Office at a particular period, from which the editor has in some degree dissented, upon an investigation of certain facts, already exhibited.—But the reader will be able to form his own judgment, upon a full view of the whole subject, and

1784. of the different sentiments which have, from time to time, been expressed respecting it.

There are three kinds of rights; (he adds,) *jus proprietatis*, *jus possessionis*, and *jus vagum*, or, an imperfect right; settlements may be ranked among the latter species; it is a right to a pre-emption.

William Penn, the first proprietary, died in England, in 1718, and his son *Thomas* continued in his minority until 1731.—*Richard*, his other son, until 1732. In this interval their Land-Office was shut up, so that during that time, warrants and patents were not regularly granted by the commissioners of property, for transferring lands to applicants.

To further the settlement of the then province, within that period, tickets, signed by one of the commissioners of property, or by the secretary of the Land-Office, came into practice. Hence it would seem sprung improvements.

The old rule being once relaxed, greater liberties were taken by the people, and emigrants from abroad often seated themselves on vacant lands without permission, and made valuable improvements. The usage of the proprietary Land-Office was favourable to these settlements.—The interests of the proprietaries were promoted; and the pre-emption of the lands they occupied, was generally considered as belonging to the settlers. The inhabitants of the frontier counties, in particular, availed themselves of the usage, and in many instances went much further than was ever intended by the lords of the soil, or their officers. He then referred to the acts mentioned in the preceding case, particularly the limitation act, which, he said, presupposes, that under the received usage a recovery might have been before legally had under a prior settlement, improvement, or occupation, where there had been an attendant possession within seven years before the suit brought. The former custom of granting the lands to real improvers, is clearly hereby recognized.

“Improvements must not have the smallest cast of an abandonment.” Thus in *Neave’s lessee, v. Edwards and Wisegarver*, Bedford, June, 1799, before *Yeates* and *Smith*, justices. (MSS. Reports.)

Ejectment for one messuage, six acres of meadow, twenty acres of arable land, and one hundred and forty-six acres of wood land, in Bedford county.

The plaintiff claimed under a warrant to *James Caldwell* for 400 acres in the forks of Dunning’s creek, including his improvement, in *Cumberland county*, dated 31st of May, 1763. A survey of 850 acres and allowance by *Richard Tea*, 16th of May, 1765, and sundry mesne

conveyances. It being afterwards discovered, that the survey included, patented lands, held under an elder right, a warrant of re-survey was obtained, upon which a re-survey was made by *George Woods*, on the third of May, 1776, containing 586 acres and 125 perches, excluding the patented lands, but including the defendant’s house and claim, which were also comprehended within the lines of the original survey.

The defendants produced witnesses, who swore, that in August, 1762, one *Robert Owings* made improvements on the land, by building a small cabin, clearing a field of near two acres, inclosed with a brush fence, and planting corn thereon. In the spring following, the settlers were driven off by the Indians; *Owings* left the place among the rest, and never returned.

In 1776, *Robert Adams*, jun. understanding that *Owings* had relinquished all claim, came to the old improvement, and cleared a small spot for hemp seed. In the succeeding year he raised another small cabin, and was then driven off by the Indians. *Wisegarver* lived about three miles distant, and took possession, but not claiming under *Owings*. About 1783, he applied to *Adams* to purchase his improvement.

The plaintiffs’ counsel offered to prove, that *Owings* had entirely given up his claim, before the survey in 1765, but were stopped by the court, who said there was already given full and satisfactory evidence of an abandonment. *Owings* quitted his cabin in 1763, and never returned, nor claimed the land. Under a warrant like the present, not precisely descriptive of particular lands, and when there was much vacant land in the forks of Dunning’s creek, a fair *bona fide* settlement, made before the survey, and continued from time to time, unless interrupted by the enemy, would be entitled to the preference. Here no less than 850 acres were surveyed under a 400 acre warrant. But circumstanced as the case is, the plaintiff’s title must necessarily prevail. Verdict for the plaintiff, *instanter*.

And, in the case of *Thomas Sturgeon’s lessee v. Alexander Waugh*, before the same judges, Dauphin county, October, 1799. In ejectment, for 46 acres of land, in Lower Paxtang township, an abandonment of an improvement for 36 years, the party living at no great distance even if the limitation act created no legal bar, was adjudged to form an insuperable obstacle to a recovery. In England, a long possession without a deed, is preferable to an ancient deed without possession. The rule holds with much greater force in new coun-

tics, where the community are peculiarly interested in the cultivation of the soil, and manual labour so much enhances the value of real property. Such are the grounds of policy in the law, and such have been the uniform decisions of courts of justice, to prevent litigation on slight pretensions, and give security to landed titles. MSS. Reports.

And, by *M'Kean, C. J.* If one in possession has a legal title, and sells to a purchaser, *bona fide*, and without notice, an equitable title by *improvement* shall not affect him; nor indeed ought it to go to the jury in evidence. (See *Talb. Ca.* 187, 258, 260. 2 *Freem.* 43. 3 *Chan. Ca.* 123. 2 *Blackst. Com.* 329, 337.) *Cherry's lessee v. Robinson, Fayette, May, 1795.* (MSS. Reports.)

In the lessee of *Hugh Neilly v. Benjamin M'Cornick, Allegheny, May, 1799,* before *Teates and Smith, justices,* (MSS. Reports.) In ejectment for lands, on a mere improvement right, a witness proved that the lessor of the plaintiff had a small nursery, and trees deadened on the land, about 22 years before the bringing of this suit.

The defendant's counsel objected, that the action cannot be maintained on the prior settlement right, without other title, unless the plaintiff, his ancestors, or predecessors, have had the quiet and peaceable possession, within seven years next before bringing the action, under the limitation act of the 26th of March, 1785, sect. 5.

The counsel for the plaintiff answered, that an inquisition of forcible entry, and detainer had been found many years ago against the defendant, in *Washington county*, and had been removed to the supreme court, where it remained untried, and that consequently the possession of the defendant must be deemed tortious; and moreover, this was a case on the frontiers, where the inhabitants had been driven off by the savages.

But, *by the Court,* Why have you not gone on with your indictment, and obtained possession thereon? If you have been forced from the lands by Indians, or others, you might have brought your ejectment before the 26th of March, 1790. The case is clearly within the limitation act. The courts not being open has been held no answer to it. 1 *Lev.* 31. 2 *Salk.* 420. 1 *Keb.* 157.) When the time once begins, it runs over all mesne acts, such as coverture and infancy. (1 *Stra.* 556. *Plowd.* 355. 4 *Term Rep.* 306, 310, 311, 312.) Plaintiff nonsuit.

An improver may also abandon his

improvement, by his own act, in obtaining his warrant.

Thus, in the Lessee of *Richard Carrol v. Robert Andrews, Washington, October, 1800,* before *Teates and Smith, justices,* (MSS. Reports,) in ejectment for one messuage and 150 acres of land, on the waters of Ten Mile creek.

It was admitted, that the lessor of the plaintiff, and *Samuel Parkhurst*, under whom the defendant claimed, originally held the lands in question by improvement rights.

The facts turned out in evidence as follow.

Stephen Carter settled on the lands in 1785, built a house and barn, planted a nursery, and cleared about 30 acres. He took out a warrant, and obtained a survey of 400 acres and allowance in 1787, by *Thaddeus Dodd*, an assistant surveyor under *David Reddick, esq.* Two years after, he removed to the *Miami*, leaving his farm under the care of *Samuel Parkhurst*, to be sold or rented. *Parkhurst*, as his agent, on the 25th of November, 1790, conveyed to the defendant 400 acres and allowance, as surveyed under *Carter's* warrant, in consideration of £.140. The defendant afterwards, on the suggestion of *Daniel M'Farland*, procured *Carter's* warrant to be returned *unsatisfied*: and on the 18th of December, 1794, obtained a new warrant for 400 acres on the head waters of Ten Mile creek, adjoining the lands of *Richard Carrol* and *Lawrence Craft*, at 50 shillings per hundred acres, upon which 406 acres and allowance were surveyed by *John Hoge*, on the 9th of Jan'y, 1796.

Previous to the last warrant, the lessor of the plaintiff made a settlement and improvement on the lands in question.

The court said, that they had been led into the evidence of the improvements made by *Carter*, by the opening counsel; but had the facts been fully stated, they would not have permitted such evidence to have been given under the circumstances of this case.

The conduct of the defendant was a fraud on every citizen of the State; instigated by avarice, and the low cunning of *M'Farland*, he has abandoned his elder and better title, under *Carter's* warrant, and he must now be concluded by his warrant of 1794, as for unimproved lands. Though evidence has been received of valuable improvements made by *Carter*, it cannot avail the defendant, who, by his own voluntary act, has defeated his claim thereto.

The defendant's counsel then relied on the bill of sale from *Parkhurst*, of the

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warrant right and survey of *Carter*; and offered to shew by *parol* evidence, a purchase from *Purkhurst* of the improvement right.

But, *by the Court*, How can you intitle yourself under a warrant, which you have obtained a return of as *unsatisfied*? Can you relinquish your interest under it, and yet retain your right against the commonwealth, whom you have attempted to defraud? One may lose an honest debt by playing a trick to come at it; as by adding a seal to a note, which was sufficient without it. (2 Vern. 162.) You have produced a written conveyance from the agent of *Carter*, and are precluded from shewing the transfer by oral testimony.—Verdict for the plaintiff.

The same principle is recognized in *Merchants' lessee v. Millison*, before cited. And in the *Lessee of John Nicholls v. William Lafferty, Allegheny*, November, 1801, before the same judges, (MSS. Reports.) The defendant claimed under a warrant to *William Hurvey*, dated 27th of July, 1785, including an improvement made by *William M^r Murray*, interest to commence from 1st of March, 1780.

The defendant's counsel proposed to examine witnesses as to the improvements made by *M^r Murray* antecedent to the 1st of March, 1780, on the lands in question.

But, *by the Court*, This point has been so often decided, and even in some cases apparently hard, that we cannot permit it at this time to be debated. The warrant-holder has precluded himself from deriving his equitable title of improvement beyond the day called for in his warrant. The decision will conduce to good morals, and serve as an additional proof of the old adage, that honesty is the best policy; and we will not deviate from it.

So, in the lessee of *Gotlieb Reigart*, and *Conrad Haverstock*, and *Christiana Samuel*, before the same judges, at *Bedford*, November, 1803. (MSS. Reports.)

The plaintiff claimed under an application entered November 17th, 1766, and a survey thereon made 10th of April, 1790. The defendants claimed under a warrant dated 2d November, 1774, whereon interest was to commence from the 1st of March, 1767, a survey made thereon, 27th of December, 1783, and a patent dated April 13th, 1786.

The defendant's counsel offered to shew a settlement made on the lands in question in 1761, and continued since that time.

It was objected that he could go no further back than 1767, when the interest on his warrant commences.

The defendants replied, that they might shelter themselves under a settlement, prior to the period of interest commencing as expressed in their warrant, although a plaintiff out of possession was bound thereby, and could not do so.

By the Court. There can be no just ground of distinction between the two cases. When either the plaintiff or defendant attempt to defraud the commonwealth, by not charging themselves with the full interest from their respective periods of improvement, it must at least operate as an abandonment of their claim for such intermediate time as they have dropped; and we shall hold them bound thereby. Both instances must rest on the same uniform principle. If, indeed, the defendant does not shew his warrant or application in evidence, and it is not produced by the adverse party, the defendant may rest on his possession, and prove his settlement from its first commencement. Circumstanced as this case is, the objection must be sustained; and so have been our decisions.

The evidence having been gone through, it appeared that the lessor of the plaintiff had been guilty of gross *laches*, and the charge being decidedly for defendant, the plaintiff suffered a nonsuit.

And mentioning an improvement in an application is mere matter of description, if the party do not state when it began; and he abandons his equity of improvement, by not paying back interest from the time of its commencement, and evidence of the improvement must be overruled. So held by *Yates, J.* circuit court, *Bedford*, October, 1807, in *Coxe's* lessee, *v. Ewing*, and others, (MSS. Reports.) Although it was warmly contended by defendant's counsel, that the applications of 1766 were not within the rule, and that back interest was never calculated on applications; and that it would be highly unjust, that one should suffer in his claim to lands by reason of his conformity to the regulations of the proprietary officers, over whom he had no control. The court said, that the regulations of the Land-Office in 1766 seem to have blended the proprietary interests, with those of the poorer class of the community, who might not have ready cash to advance for the purpose of taking out warrants, but who, by the addition of labour to the value of the soil, would give a permanent security for the payment of the consideration money. The new institution, however, cannot be regarded as a variation of the rights of the proprietaries, or the duties of individuals. Warrants have been taken out for improvements after 1766, which fully evince the mode of procedure,

when improvements previous thereto, were intended to be secured. The old consideration and quit rents are specified therein, as the terms on which such warrants issued. It follows, that such improvements cannot be adduced to establish a title to the lands anterior to such application.

On the foregoing case, it is to be observed, that the ground taken by the counsel for defendant, was entirely mistaken. By a reference to the proceedings introductory to the opening of the office on the new plan, in 1765, particularly the advertisement of 17th of June, 1765, it will appear, that every person desirous to settle any vacant land purchased of the Indians, and not appropriated to the proprietaries' use, were to apply to the secretary, who, instead of granting a warrant, was to enter the person's name, with the date of his application, and the description, or location of the land. And they were to attend the deputy-surveyor, at a time to be appointed, to show him the land, and have it surveyed; and to pay interest from six months after the date of the application.—Every idea of improved land is here excluded.

But, all persons possessing, or claiming lands, on account of any settlements, or improvements, whether on the east or west side of Susquehanna, were to make application, and to bring with them authentic certificates, of the nature of their improvements, and the time when their settlements first began. So, although the office was closed on the west side to any application for unimproved lands, for one year, it was open to applications for improved lands.

And, on the 1st of August, 1765, it was resolved, that the secretary give warrants to such persons as have built on, and resided on the land they apply for, and have a just claim to, as an improvement, bringing a certificate from a neighbouring magistrate, or other satisfactory proof of the nature of the improvement, and first settling thereof; when the interest and quit-rent is to commence. But if no such proof was made, it was to be entered as an application; the deputy was to report on the return of survey, and then warrant to issue, if approved by the governor.

And, on the third of October, 1765, the deputy-surveyors were particularly enjoined either in applications for land as unimproved, or on warrants for improvements, since the opening of the office on the new plan, to report with the return of survey, where they found any improvements on the land, and fully to inform themselves, and report when such settlement and improvement first began.

The office opened, generally, on the west side, on the same plan, August 1st, 1766. The Land-Office, therefore, unquestionably had it in view, to detect frauds in the two cases: 1st, where, in warrants, the time of the commencement of the improvement was not truly stated; and, 2d, where the application called for no improvement, or, no certificate was produced where an improvement was part of the description. Applications, therefore, to cover lands antecedently improved, were frauds upon the Land-Office. And if the survey was returned without a reference to such improvements; the fraud was two-fold. And the principle applied to all other cases, must apply in its fullest force, to the applications of 1765 and 1766 and later, in the old purchases.

Yet where the survey, on a prior *in-descriptive* warrant, covered the whole of the defendant's claim, as well that which had been actually improved and settled previous to such survey, as the adjoining woodland, which was an act never sanctioned by the Land-Office; in the same case, the improvements, antecedent to the defendant's application, were so far admitted, as to shew the invalidity of the plaintiff's survey.—Such survey, the Judge added, if it included the real *bona fide* settlements of third persons, would not have received the sanction of the Land-Office, or of the country, from their uniform usages. May not such evidence be admitted, to shew, that the plaintiff's survey could not legally take effect? It is true, that by going into this testimony, the defendants will derive a degree of benefit from improvements, the equity of which they seem to have abandoned. But this appears inevitable, and flows as a necessary consequence from the investigation of the validity of the survey made for the plaintiff. The point was, however, reserved at the plaintiff's instance; but it does not appear to have been again stirred. But if the point should arise in other cases, the reconsideration of it would not be precluded; but it would be still open for a more solemn decision.

In *Nicholl's v. Holliday*, before cited, it was held, that an early settlement, accompanied with a subsequent warrant and survey, is preferable to a prior warrant and survey.

The plaintiff settled on the land in 1774, and built on, and improved it, and constantly resided in a cabin very near the land in dispute, except when the inhabitants were driven off by the Indians. A consentable line was established between this place and a tract whereon one William M. Manimiy lived,

1784. whose house was about half a mile from the acknowledged boundary.

Nichols's on the 22d of March, 1798, took out a warrant for 380 acres, including his improvement, &c. interest to commence from the first of March, 1774, and obtained a survey thereon of 380 acres and 48 perches, on the 6th of September, 1799, whereof 108 acres were claimed by *William Harvey*, which included the lands in dispute, but no one had lived hereon until 1785.

The defendant claimed under a warrant to *William Harvey*, dated 27th of July, 1785, including an improvement made by *William M. Murray*, interest to commence from 1st of March, 1780, and a survey thereon of 108 acres, made on the 30th of June, 1786.

By the Court. Has not enough been shewn, to evince that the plaintiff has the earliest and best possessory right, and must necessarily recover? He claims under a *bona fide* settlement eleven years earlier than the defendant's warrant, uniformly pursued and continued, which must embrace the 108 acres in dispute, and to this he unites a title by a warrant and survey, paying interest to the commonwealth from his first improvement.

The jury gave a verdict for the plaintiff, *instantly*. (MSS. Reports.)

No actual settlement, subsequent to an adverse survey, can confer a title; or be received in evidence. *Eddy's lessee v. Faulkner*, Allegheny, November, 1803, (MSS. Reports) which will be referred to more at large, in another part of this note.

An improver of lands taking out an application, including his improvement, and obtaining a survey, is thereby concluded, and cannot hold contiguous lands under the same improvement right. Lessee of *John Holmes v. Thomas Kay, Bedford*, November, 1803, before *Yeates* and *Smith*, justices, (MSS. Reports.)

Improvements made on land, after an early, descriptive, adverse warrant, and a survey returned, cannot be received in evidence against a distant owner.

Thus, in the lessee of *Frederick Pigou v. Nicholas Nevill and James Graham*, at a circuit court, at Northumberland, October, 1805, before *Yeates, J.* in ejectment for 359 acres of land, in Buffalo township.

The plaintiff claimed under a descriptive warrant, in the name of *Ludwig Karcher*, dated 25th of October, 1774, and a survey made thereupon on the 27th of April, 1775, which was returned into the Surveyor-General's office, on the 12th of March, 1776.

The defendant's pretensions rested

on a later descriptive warrant, granted to *Conrad Sharpe*, on the 26th of October, 1774, and a survey thereon made 8th of Nov. 1774, but the time of its return did not appear.

The defendants shewed in evidence, without opposition, that *Sharpe* came upon the lands in October, 1775, cleared three or four roods square, fell some trees, planted a few apple seeds, and raised part of a cabin four logs high. They then offered to prove the extent of the improvements made on the lands since October, 1775, up to the time of bringing the ejectment, in 1800, which was opposed.

Yeates, J. I am constrained to overrule the testimony. Improvements made on lands in dispute, after an adverse early descriptive warrant has issued, and a survey made thereupon, which has been returned into the Surveyor-General's office within 10 1-2 months afterwards, can give no pretence of equity against the distant owner, and can only serve to mislead the jury. Verdict for the plaintiff. To the same point see *Galloon v. Dunning*, 4 Dallas, 121-2.

The doctrine of improvements will be occasionally mentioned, with reference to certain acts of assembly, at the close of this note. It remains only to notice the printed authorities on this point.

McCurdy v. Potts, 2 Dallas, 98. This case is of little, if any, importance; and the principal point of it has been differently decided, subsequently, by the same judge, in cases already noticed.

Buchanan's lessee v. McClure, adjudged in July, 1808, depended on the lottery applications of 3d of April, 1769. The plaintiff's number was later than that of the defendant, but he endeavoured to support his claim to preference, by a settlement made on the land after the purchase made of the Indians in 1768, and before the time of opening the office, the 3d of April following.

The judge who tried the cause, charged the jury, that this settlement and improvement gave a preference to the settler, even against an application properly describing the land; and that No. 2, accompanied with such settlement, was entitled to a preference over No. 1, and the jury found a verdict for the plaintiff. The judge, on the motion for a new trial, adhered to this opinion, for reasons given at large in the report. The chief justice, and two other judges were of a different opinion, and the judgment of the court was delivered by the chief justice.

The terms on which the office was opened, were stated at large, (as they

are before given.) The counsel for the appellee have made two points. 1, That the settler was entitled to a preference by the law of the land, of which the proprietaries could not deprive him. 2, That he was entitled to a preference by a fair construction of the terms on which the office was opened, 3d of April, 1769.

Title by settlement has always been favoured, and under proper restrictions it deserves favour; but it must not be supported to the destruction of all other rights. It cannot be denied, that the late proprietaries, who were absolute owners of the soil, had a right to make sales, and to grant rights, on what terms they pleased. If they had thought proper to grant no kind of right, but on payment of the purchase money, neither the legislature, nor the courts of justice could have controlled them. But as they had been in the habit of encouraging poor settlers, who were in the beginning unable to pay any money, this practice at length grew into a right, and what had originated in benevolence, became the law of the land. I speak now of the lands sold by the proprietaries prior to the year 1769. The last purchase made by them of the Indians, was at *Fort Starvix*, 4th of November, 1768. In opening their office for the sale of these lands, they determined to give no preference to persons who settled between 4th of November, 1768, and 3d of April, 1769. To have given such preference, would in a great measure have defeated the equitable intention of putting all persons on an equal footing. Nor could there be any just cause of complaint against the regulation adopted by the Land-Office. Only a few months intervening between the purchase, and the notice of the opening of the office; and those months including the winter, when improvements could not be carried on to a great extent, it was improbable that any one could have been induced to go to a considerable expense, under an idea that he would obtain a preference by settlement.

But there was a class of settlers of another description, whose case was entitled to a different consideration. This leads me to the *second* point, the true construction of the terms proposed by the Land-Office. Although it had always been the policy of the proprietaries and the legislature to discourage settlement on lands not purchased of the *Indians*, because it gave offence to the *Indians*, and might produce war, yet when the seat of war between *Great Britain* and the colonies, and *France* and the *Indians* allied to her, was

transferred to the *Ohio* and the country between *Pittsburg* and the great lakes, it became extremely convenient, and almost necessary, that there should be a chain of inhabitants on the military roads leading from the settled country to the western waters. For this purpose the commanding officers of the *British* forces had been in the habit of granting licences to settle, and in many instances persons seated themselves without licences, but under an implied permission. These people were exposed to great danger, and many of them were cut off by the savages in their frequent incursions. This kind of settlement had taken place, chiefly, but not altogether, in the western parts of the State. It is to be remarked too, that many of those who had settled without licence, were entitled to favour, because they had relinquished their settlements in consequence of an act of assembly passed in the spring of the year 1768, and a proclamation issued by the governor in pursuance of it. It was thought reasonable therefore, that a preference should be given, on the opening of the Land-Office, to "those who had settled plantations, especially those who had settled by permission of the commanding officers to the westward."

Had the proprietary order stopped here, there might have been some ground for arguing that the words of the order included *all* settlers, prior to the opening of the office, however different their cases or merits might be. But, to take away all doubt, the order proceeds to exclude *certain* settlers by negative expressions, viz. "Those who had settled, or made what they call improvements since the purchase." It is contended that these negative words are to be restricted to those persons who only made trifling improvements, without having settled plantations. But neither the expression, nor the reason of the thing, justifies this restriction; the words "those who had settled," include all kinds of settlement; and the reason of the order, as before explained, certainly demanded that no preference should be given to any kind of settlement made after the purchase.

I have hitherto considered this matter as if it were a new point. But that is far from being the case. It has been understood ever since the opening of the office in 1769, that those persons who settled between 4th of November, 1768 and 3d April, 1769, were entitled to *no preference*. The Board of Property determined so in the case of the very land now in dispute, on the 26th of March, 1770. The same principle was laid down by chief justice

1784.

Ches., before the Revolution, in *Campbell's* lessee *v. Kidd*, and by chief justice *McKean*, and other judges of the supreme court since the Revolution, in *Thompson's* lessee *v. Beeler*, and *Sheerer's* lessee *v. McClure*; and it is admitted that this has been the uniform opinion and course of decision at *Nisi Prius*. Now, although the point has never been brought before the court in Bank; yet, when a principle affecting titles to land has been supported for near forty years, by repeated decisions at *Nisi Prius*, from which no appeal has been made, it appears to be so incorporated with the law as to render it dangerous to touch it. A new trial was awarded. 1 Binney, 385.

If the plaintiff claims under an improvement right only, he cannot support an ejectment, unless he has been in possession within seven years before the suit was brought. *Burd v. the lessee of Dunsdale*, on error. 2 Binney, 89.

Of Warrants.

A warrant must be judged of as it appears on the face of it; and whether it is sufficiently descriptive of, or locates precisely the lands in question, can only be determined by testimony ascertaining the local situation of the grounds, and the natural and artificial boundaries and marks contained therein. And the intention of the party is of no moment, unless it is reduced to writing in the warrant. But such intention may be given in evidence against the warrantee.

So determined, at *Huntingdon*, May, 1793, before *McKean*, C. J. and *Yeates*, J. in the Lessee of *J. M. Nesbit v. Titus*, *Kerr* and *Rankin*, (MSS. Reports.)

The witness was offered, to prove the parol declarations of the secretary of the Land-Office at the time of issuing the warrant, the claim of *Rankin* to the lands in question, and his intentions in taking out the warrant; and also the applications of the witness, as agent of *Rankin*, to *Richard Tea*, the deputy-surveyor of the district to cause the lands to be surveyed, and what passed thereon.

The court expressed themselves as above stated. They said it would be of the most mischievous consequences to the community to allow the two first species of evidence to be given; nor under such a practice would any one be safe in his title to lands. It would introduce every evil which the act of assembly respecting frauds and perjuries, was intended to prevent. The declarations of the secretary of the Land-Office cannot have any legal operation. If any particular agreement was made, or special indulgences intended by him in behalf of the applicant, they should have been committed to writing, or inserted in the warrant, or in the written directions to the deputy-surveyor to

make the survey, that they might be open to the view of every one who might be desirous of investigating the title.

As to the applications by the witness to the deputy-surveyor to make the survey, and what passed thereon, it is proper evidence; because it is an act done in prosecution of the title, and tends to shew, that no laches, or neglect, is imputable to the party who took out the warrant, but that he makes the proper efforts to complete his title. Such evidence is constantly received. Were it otherwise, it would scarcely ever be possible to shew fraud or improper conduct on the part of the deputy-surveyor. In contests like the present, it is of great moment to establish that the party's pretensions have been duly followed up without negligence; that he has not lain idly by, while surveys have been made on the lands for other persons; and that when a survey adverse to his claims has been made, he has filed his caveat in a reasonable time for bringing the matter to a hearing before the Board of Property.

And in the Lessee of *Bartram Galbreath v. Philip Maus*, at *Northumberland*, Oct. 1797, before the same judges, (MSS. Reports.) On argument, the court ruled, that parol evidence of party's intentions in entering an application for lands in the secretary's office, cannot be received to assist, or bolster up an indelictive location of the lands in controversy. The efficacy of an application must depend on the written words of it; this is the only notice the applier gives of his intentions to appropriate certain lands, and the adverse party shall only be affected therewith. Absolute, precise certainty, however, is not to be expected in the descriptions of lands to be surveyed in a new country. It has been often said, that they need only to be certain to a common intent. Yet the intentions of an applier for lands may be given in evidence against him to defeat his pretensions to the object in dispute, by shewing that he intended to locate other lands. Because the mischiefs and inconveniences attending the former case, do not exist here. The rest of mankind are not prejudiced, or injured by such testimony; it only affects the party who declares his views and designs in the contract, to what particular spot he considered it as referable.

In the Lessee of *Irwin v. Bear* and *Owen*, at a circuit court, *Northumberland*, October, 1805, before *Yeates*, J. The controversy was chiefly respecting the relative merit of the applications, whether they were descriptive of the lands in question.

The defendant's counsel offered to shew that the original owner of the application under which he claimed, who made the discovery, was, when he made the

Description thereof, on a certain stream of water running through the land in question, and that the said stream of water was then considered by him, and the people with him as the *second fork of Fishing Creek* (which the location called for;) and that then, and sitting upon a log on the land, he made the description thereof, which was inserted in his application; which was opposed.

By the Court. Part of the testimony offered is admissible, and part thereof is inadmissible.

The sentiments of the people as to streams of water, and the names whereby they were usually called, at an early day, when the country was unexplored, may certainly be given in evidence; and due allowance will be made for inaccuracies in these particulars: but this indulgence must be confined within reasonable bounds;—it cannot vary the locality of the lands described in the warrant or application.

The decisions have uniformly been, that such inceptions of right, must be judged of *ex visceribus suis*, from what appears on the face of them. Whether they sufficiently describe, or locate precisely, particular lands, can only be determined by comparing the terms wherein they are expressed, with the natural, or artificial boundaries described therein; and these boundaries must be ascertained by evidence, either written or oral. It is of no avail what the intention of the party is, if he does not reduce it to writing when he applies for the lands; though his intention may be given in evidence against him to defeat his claim to other lands than those he really meant.

These rules are bottomed on sound policy, and conduce to justice, common safety, and public convenience. A contrary practice necessarily tends to error, litigation, fraud, and perjury. A contract is the act of two minds: it either binds both parties, or is obligatory on neither. The vendors of lands, whether they be the general lords of the soil, or private individuals, are bound by the plain meaning of their written contracts. If the description of lands be materially, or radically defective, and naturally lead to mistake, the party applying must impute his misfortune to himself. How can any man safely lay out his money in taking up lands, unless by applying to the public offices, he can discover whether the lands have been before appropriated? He cannot penetrate into the bosoms of others, nor receive information, that a particular tract not described in a location, was *intended* by the party sitting on a log, lying on the land! The latter part of the evi-

dence offered, must be overruled. (MSS. Reports.)

The location of a warrant must be collected from its own words compared with the state of the country at the time; not from the terms of the Receiver-General's receipt, which remains in the party's custody, and could not operate as notice of his pretensions to other appliers for lands, before a survey is made. *Peters's lessee v. Fetter, Bedford, October, 1809.* (MSS. Reports.)

A warrant describing lands particularly, but stating their situation in one county when they lie in another, is binding on the commonwealth, after receipt of the purchase money. So held in the Lessee of *Thomas Grant v. Daniel Eddy, Northumberland, October, 1796*, before Teates and Smith, justices, (MSS. Reports.) The court observed that the name of the county must be considered as matter of description. The lines of the two contiguous counties were not run. The plaintiff knew not in which of the counties the lands would lie, and therefore designates them in his warrants in the one county, or the other.—An individual conveying 400 acres of land for an adequate consideration to another, and placing its situation in the county of *Luzerne*; yet if it should afterwards appear, (from other precise descriptions, and adjoining lands,) that the tract intended to be purchased, was situate in the county of *Northumberland*.—It will not be seriously doubted, that the vendor should be bound thereby, and that he is not at liberty to grant the same tract to another. Why from parity of reason, should not the commonwealth be bound by the act of their proper officers.

The court also observed, that it would be highly unreasonable to expect the same precision and correctness in the descriptive parts of warrants to take up lands in a tract of territory newly explored, as where the adjacent country had been fully settled and long known. This remark holds with peculiar force, in the description of waters flowing through a considerable extent of ground, where parts of the stream may be properly deemed *main branches* in reference to other parts in the newly discovered lands, but which, on taking the *whole* river, or creek, into view, could not thus be denominated with propriety. It has long been considered sufficient, if the warrant is so couched, as to point out the lands contemplated with certainty to a common intent. Where an object visibly marked is referred to, it reduces general and indescriptive expressions to a fixed certainty.

1784. *Of abandonment, and of shifted or removed warrants and applications.*

The subject of abandonment has been incidentally mentioned in *Nesbit v. Titus*; but the circumstances under which an abandonment shall be presumed are so various, that it is necessary to a full understanding of the law on this head to give the cases pretty much in detail; and the doctrine of removed warrants will be found to be connected so much with that of abandonment, as to render it impracticable to separate them without a tedious and unnecessary repetition.

Lessee of *Ephraim Blaine v. George Crawford, and Henry Fore, Allegheny, May, 1793, before McKean, C. J. and Yeates, J. (MSS. Reports.)*

The plaintiff founded his title on an application, dated 6th of April, 1769, No. 2860, in the name of *James Byers, jun.* for 300 acres of land, up the bent of *Monongahela*, on the west side, near or adjoining general *Braddock's* road. A conveyance from *Byers* to *Blaine*, dated, 28th of June, 1769; a judgment of the Board of Property on the 1st of September, 1783, (which was not shewn in evidence further than as recited in plaintiff's patent.) A warrant for the acceptance of a survey said to have been made for *Alexander Ross*, 25th of November, 1769. On an application in his name, dated, 20th of April, 1769, No. 3116, whose right was declared to be invalidated, on *Byers's* application, December 23d, 1784, and a patent to *Blaine*, 26th of December, 1784, reciting as above.

The defendants held under one *James McKee*, who claimed the premises under a permission granted by Captain *Charles Edmonstone*, commanding officer at *Fort Pitt*, dated, 29th of September, 1768, to the said *Alexander Ross*, "To settle and improve a tract of land at *Braddock's* crossings, on the west side of *Monongahela* river, 14 miles from *Fort Pitt*." The foregoing application of *Ross*, No. 3116, calling for 300 acres at *Braddock's* upper crossings, on the west side of *Monongahela*, about 14 miles from *Fort Pitt*," and the survey returned thereon; the attainer of said *Ross* of high treason, in consequence of the act of assembly of 6th of March, 1778. A sale by public vendue by the agents of forfeited estates of *Westmoreland* county, (before the division of *Allegheny* therefrom,) to the said *James McKee*, for £. 35, on the 12th of March, 1784, a patent thereon to him, reciting the above particulars, dated 29th of December, 1785.

It did not appear in evidence, that *Blaine*, after the conveyance to him by *Byers*, took any steps whatever to obtain a survey, or file a *Caveat* against the

survey of *Ross*, or use any diligence in following up his pretensions to the land, until he obtained the judgment of the Board of Property in 1783. But how the controversy originated before them was not shewn, or whether any person was notified, or did appear, in support of the claim, late of *Alexander Ross*.

But it was proved by several witnesses, that the said *James McKee* first seated himself on the land, and began to build a cabin about Christmas, 1768, which was finished in 1769; after the office opened, and originally held it by what he falsely called an *improvement*, which he had continued by himself or his tenants, up to the present period; and that at the time of commencing the ejectment, he had a good house, barn, stables, some meadow ground, and above 60 acres of land cleared on the farm. That an application had been sent to *Philadelphia*, to be entered for this land, which had miscarried; but that under an impression that the location had been sent by mistake to a wrong surveyor, the survey had been actually made for the said *James McKee*, and £. 5, paid for surveying fees.

It was also proved by one of the agents of forfeited estates, that the premises had been advertised for sale by order of the supreme executive council, and were publicly sold at *Pittsburgh*, by outcry, on the 12th of March, 1784, (no one setting up, or pretending any claim or title,) to the said *James McKee*, for £. 35, who paid him the consideration money at that time; that he made return thereof within five or six months afterwards to the council; and that in December, 1785, he paid the money into the treasury; and *Blaine* meeting him in *Philadelphia*, first acquainted him of his having a title and patent for the lands, and desired him not to proceed on the sale; to which he answered, that having sold, and paid the money into the treasury, he was bound to go on, in discharge of his duty; that he informed the council of what had passed between himself and *Blaine*; but on consideration they awarded a patent to issue to *McKee*.

It was likewise shewn, that the location of *Ross* was more precisely descriptive of the lands in question, than that of *Byers*; the former being better adapted to the swell of the bottom land in the bend of the river *Monongahela*. To obviate the objection that *Blaine* did not give notice of his title to the lands at the sale made by the agents, it was proved, that he proceeded from *Pittsburgh* to *Kentucky*, on the 21st of November, 1783, and did not return from thence until the month of June following.

Yeates, J. (the th. Justice being indis-

posed,) charged the jury. He observed that it was incumbent on the plaintiff to make out a good title before he could recover the lands in question; and that the real gist of the controversy lay in a proper comparison of the rights of *Blaine* and *Ross*, previous to either of the patents being issued. Applications in the Land-Office, after the opening of it, on the 3d of April, 1769, are the inceptions of titles when duly pursued. Merely of itself such a location creates no right; no part of the purchase money is paid. No title vests thereby, nor does it form any contract on which the party could be sued by the proprietaries, or the state, until a survey is made, designating the party's pretensions by metes and bounds. When such a location is followed up with proper diligence, it will give a right of pre-emption to the lands prescribed therein. But any location may, like the imperfect title of improvement, be forfeited by abandonment or dereliction. Where there has been negligence in obtaining a survey, a subsequent location may, by due industry, defeat its operation, as to lands, which it might be supposed to describe with sufficient accuracy and certainty.

If these general rules are correct, and it is presumed they are, the application of them to the case before us, is familiar and easy. The plaintiff's location does not precisely describe these lands. It calls for the land in the bend of the river. That of the defendants is more close and descriptive. The plaintiff has been guilty of gross laches and neglect in laying by for fourteen years, without getting a survey made, or making any pretensions to the lands, during which period they have been rendered much more valuable by the labours of the occupier. *Ross* gets a survey returned, which appears however to be made for *James McKee*, and paid for by his agent. If the plaintiff has suffered a survey to be made, though he might originally have included the lands in question, and not entered his caveat in due time, or made his objections thereto, he shall be postponed. Such is the practice of all courts and juries, and of the Land-Office; and ought to be so, on general principles of convenience to the community. For no one should be permitted under a general, though early application, to thumb the face of a whole country, and retard its settlement and cultivation by his own negligence.

The question then, if determined on the relative merits of the titles of *Blaine* and *Ross*, immediately before the latter joined the common enemy, will admit of an easy solution. The maxim "*Vigilantibus non dormientibus leges subservi-*

unt," applies with peculiar force, in the case of rights founded on locations. I throw out of view the permit of *Captain Edmonstone*, as it does not appear that a settlement attended it, but an adverse possession has been shewn in evidence.

The judgment of the Board of Property cannot alter the nature of the title; what grounds they proceeded on, we know not; but this we know, that the parties interested have a legal right to contest their decision in a court of law, by the express words of the act of assembly of 5th of April, 1782; no caveat, or judgment of the Board of Property is produced on the part of the plaintiff. It does not appear that any notice previous to the hearing, was given to the attorney-general, the agents of forfeited estates, or to any executive officer whatever; we must therefore conclude it to be *ex parte*, nor can I bring myself to believe, if the Board of Property knew as much of the case as we are now possessed of, they would have given such a judgment.

By the attainder of *A. Ross* for high treason, his whole estate, real and personal, became vested in the commonwealth, under the 5th section of the act of 6th of March, 1778, and under this law, and the supplement thereto, passed the 29th of March, 1779, the agents of forfeited estates were directed to sell the estates of traitors in a certain mode prescribed. The same laws which vested the property in the state, qualified the sale of it by the instrumentality of certain persons authorized for that peculiar purpose, and such a restriction was highly necessary for the general benefit: otherwise, highly improved lands, lying perhaps in the vicinity of the metropolis, or in the heart of the state, forfeited by the attainder of persons who had joined the enemy, might be disposed of on the common terms of vacant and unappropriated lands; which never could have been the will of the people. These acts are certainly more than *directory*; they are *restrictive*.

It appears to me, therefore, that it is an insuperable bar to the plaintiff's recovery, that he does not deduce his title through the proper and legal conduct of sale and conveyance, supposing the adverse legal title of *Ross* to be most preferable. The agents of forfeited estates sold these lands on the 12th of March, 1784, and then received the money of the purchaser. It is not possible to conceive, that the commonwealth, above nine months afterwards, could convey a legal right to the lessor of the plaintiff, after they had parted with their title through the medium of agents of forfeited estates. They could not grant what they had not. And neither the state, nor

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an individual, can do an act, and produce an effect morally impossible in itself. The plaintiff thereupon suffered a nonsuit.

And, in the Lessee of *Irwin v. Nicholls and Swan*, at *Westmoreland*, May, 1793, before the same judge, (MSS. Reports,) in which it appeared, that the plaintiff, who claimed under a location of 3d of April, 1769, had made no application for a survey until some time between the years 1774 and 1776, when, on being informed that the location was more descriptive of other lands than the lands in dispute, he declined making the survey, without any force or threats from the then holders of the land, and in fact no application for a survey was afterwards made, nor any survey ever made, and it was also sworn that the location might be supposed to describe with convenient certainty, the lands in possession of defendant, but not exclusively of other tracts.

The defendant claimed under posterior locations, and a settlement in 1770, and cultivation of the lands, but had no survey.

The court, independent of the operation of the limitation act, recognized the same principles, and observed, that a location independent of due diligence being used to obtain a survey, or to prosecute the claim of the party, gives no legal, or equitable right to the pre-emption of lands. It is of itself no title. Like the fancied land jobbing improvements of girdling a few trees, or picking some brush heaps, such applications give no equity; and when deserted and abandoned, like them, they afford not a shadow of a right. The party by his negligence and laches, forfeits all his pretensions to a claim, which, if duly pursued, would be the inception of a title.

So, in the Lessee of *Henry Drinker v. William Holliday*, *Huntingdon*, May, 1796, before *Shippen* and *Yeates*, justices, (MSS. Reports.) The court in their charge, laid down the general doctrine, as follows, "Much will depend on a party's pursuing his pretensions on a warrant, or location, with due diligence; where he is guilty of delay and laches, his claim to particular lands, which he might otherwise secure, shall be postponed to a subsequent warrant and survey, aided by vigilance and industry.

When a survey has been made, which is supposed to be injurious to another claimant, he ought to file his caveat, or institute his suit in a reasonable time, or account satisfactorily for his neglect. Failing herein, he shall suffer for his negligence; and particularly so, where his adversary has proceeded to

complete his legal title, or bestowed considerable labour in improvements.

The case of the lessee of the reverend *John Ewing v. Daniel Barton*, furnishes a striking instance of an abandonment, different from that of adverse locations.

Both parties claimed under the same application, in the name of *Nathaniel Breden*, 3d of April, 1769. The defendant was a tenant under the heirs of *William Ross*, deceased.

It was proved that the name of *Breden* was made use of by *Dr. Ewing*, and that the original application was in his hand writing. Indorsed, "*John Galloway*."

A survey of 334 acres was thereon made by *William Scull*, on the 27th of June, 1772, but at whose instance or expense, did not appear. It was returned on the 27th of October, 1772, for *William Ross*, and a patent issued to him on the same day.

A certain *Nathaniel Breden* conveyed the location to *William McCord*, on the 7th of August, 1772, in consideration of five shillings; and *McCord* conveyed to *William Ross* on the 27th of September, 1772, in consideration of £200. Both deeds were recorded on the 3d of July, 1784, and it appeared, that in the spring following his purchase, *Ross* began to improve on the lands, cleared six acres, and fenced the same, and built a house thereon. He had occupied the lands ever since by his tenants, and had paid all the taxes. It was shewn, that at the time of trial, there were on the place, between 80 and 90 acres of cleared land, a large house and barn, a good orchard, and six acres of meadow made thereon.

The plaintiff claimed under a conveyance from another *Nathaniel Breden* to *Dr. Ewing*, in consideration of five shillings, dated 20th of October, 1773, and recorded 9th of February, 1793; and this *Breden* swore that *Ewing* had made use of his name, and that he had made a conveyance to no other person.

The acknowledgment of *McCord*, that he had procured a person to assume the name of *Breden*, and personify him, was given in evidence by the deposition of another witness.

But the court said this part of the deposition ought not to have been read, and could have no weight in the cause; because *McCord*, if living, could not have been received as a witness to invalidate the deed he had executed, nor shall his subsequent confession, after his death, be received for such purpose. Several other witnesses swore, that *McCord*, was a reputable man, and of a good moral character.

The court gave it in charge to the jury, that the only question which occur-

red, was, whether the location had been followed up, with due diligence by Dr. *Ewing*, for if he has been guilty of neglect and *laches*, he has forfeited his pretensions to the land. In ejectment it became the indispensable duty of the plaintiff, to establish his own title, against the defendant's possession.

If the survey had been made at the expense, or by the procurement of Dr. *Ewing*, it was capable of proof. It could not be presumed that it was made by the *Breden*, under whom he claimed, because he was a mere nominal person; and his deposition, moreover, has been read. The survey preceded the assignment to *McCord* only one month and ten days, and might have been made with a view of a sale to *Ross*; no claim is made while the defendant's landlord is paying taxes, and laying out large sums of money for the improvement of the lands; no suit is brought until October term, 1793, in the common pleas: nor does it appear that Dr. *Ewing* made any effort whatever, respecting his claim, till near twenty years after the assignment of the location to him.

The case also appeared to be within the words and intention of the limitation act passed on the 26th of March, 1785. Though there is a survey on this application, it is not shewn that it was effectuated by the lessor of the plaintiff, or that he ever attempted to make one; and therefore it shall not enure for his benefit. The survey is adverse to his title; has been returned for *Ross*, and the legal title is now vested in his heirs. There was a verdict for the defendant. *Northumberland*, May, 1798, before *Shippen* and *Yeates*, justices, (MSS. Reports.)

In the Lessee of *Daniel Gripe*, v. Reverend *David Baird*, *Huntingdon*, May, 1805, (MSS. Reports.) *Yeates*, J. laid down the following as a general rule.

"When there has been negligence in obtaining a survey, a warrant or location, generally descriptive, but vague in its terms, must give way to a subsequent warrant or location, equally vague whereon a survey has been made; or to a subsequent precise warrant and location, even without a survey, where it accurately describes the lands."

In *Lowrey's* lessee, v. *Gibson*, before cited, it was held, that one having a warrant, and not following it up with diligence, but silently permitting others to improve, shall be postponed.

Lessee of *John Irwin*, v. *Andrew Moore*, *Westmoreland*, May, 1797, *Yeates*, J. (MSS. Reports.)

The lessor of the plaintiff grounded his pretensions on a military permission of Captain *Charles Edmondson*, commanding officer, at *Fort Pitt*, to him,

dated 18th of September, 1767, "To improve and occupy a plantation and tract of land for himself, and one for his relation or friend, on the south side of the great road, near the mouth of Bushy run, in Beyerley's neighbourhood, he paying forty shillings yearly, if demanded, and subject to the regulations of the commanding officer at *Fort Pitt*, for his majesty's service. "In pursuance hereof, *Irwin* in 1768, built a small cabin, cleared one acre of ground, and made a small deadening on lands about half a mile distant from those in question, and a quarter of a mile from his present place of abode, and had a tenant in the cabin for some little time.

On the 25th of July, 1769, he filed two applications in the Land-Office, one marked, No. 3663, for 300 acres on the waters of Brush creek, on the southwest side of the new road joining land of *Thomas Lyons*, and from thence extending down the run to Brush creek, in his own name. And the other, No. 3665, in the name of *James Irwin*, for 300 acres on the waters of Brush creek, bounded by lands of *John Irwin* and *Christopher Rudeback*, under this latter application he claimed the lands in dispute, and gave some slight evidence of a survey thereon, which was strongly controverted.

The defendant claimed under an application of *Casper Geyer*, for 300 acres on the head of Sewickley, about four miles from Beyerley's, entered on the 3d of April, 1769, No. 105, and a survey thereon of 301 1-2 acres, made 10th of April, 1770, and a patent dated 14th of August, 1770. He also gave in evidence a recovery in ejectment by the lessee of *Casper Geyer* against the said *John Irwin*, of the premises, at November assizes, 1788, by counsels confessing judgment to the plaintiff.

It was asserted by each party, that the application of his adversary did not describe the lands in dispute, but was intended for another tract; and evidence was given on both sides as to this point. The defendant insisted, that the military permission not being followed by a settlement, gave no preference.

The court submitted the respective locations to the jury, who were to determine as a question of fact, which of them was most applicable to the controverted grounds. They laid it down in their charge, that a precise, close, descriptive warrant, or application, would take place of a general, loose, indescriptive one, though earlier in number or date; but a warrant or application of the latter kind, even though shifted at a distance from the spot seemingly called for therein, if fairly surveyed, returned and appropriated by the proper authority, when there was no intervening, opposing right,

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In the case of the Lessee of *Jesse Fumston v. John M. Mahon, Northumberland*, October, 1797, before *M^r Kean C. J.* and *Yeates, J.* Both parties claimed under removed or shifted applications. A survey was said to have been made on the plaintiff's application on the 6th of June, 1771, but it did not appear how, or when it was returned into the Surveyor-General's office.

The defendant's survey was made in July 1782, on which a warrant of acceptance issued 20th of February, 1790, and a patent 23d of February, 1790.

It was much contested, whether any survey had ever been actually made on the plaintiff's application; but the verdict was for the defendant on other facts in the case, not illustrative of the present subject; yet the doctrine of removed warrants was one of the points, and was fully debated.

For the defendant it was contended, that though by the usage of the proprietary Land-Office, before the revolution, a deputy-surveyor might shift a lost location to other lands, where there was no prior right, yet no contract took place as to the lands surveyed, between the proprietaries and the individual, until the time of issuing the warrant of acceptance. Then the title first commenced, the original contract having been for other lands. There is no similitude between this case, and that of removing warrants, where the money has been paid in whole or in part, before the warrants issued. Here nothing has been paid to the late proprietaries, or the commonwealth, by the lessor of the plaintiff, in

order to raise an use, and the owners of the soil could not compel the payment of the purchase money under such circumstances.

For the plaintiff, it was answered, that it has been admitted by the defendant, that his title first began with the warrant of acceptance on the 20th of February, 1790. If the plaintiff's title is earlier and better, it ought to be preferred. The general practice of all the deputy-surveyors, in shifting lost locations, is perfectly familiar to the whole country, and was never questioned before the Revolution. If no private person could claim any right, or interest in the lands so surveyed, there could be no pretext of injury or hardship done to any individual; and the proprietaries attained their object, by disposing of their lands. But it was necessary there should be a return thereof made into the Surveyor-General's office, to operate as *constructive notice* to other applicants. For if one ignorant of the survey made, should apply for the same lands, and obtain a survey, before the former was returned, the latter would be entitled to a preference. Many valuable titles in this state depend on these grounds, which it would be dangerous to impeach. The return of a survey, fairly made by a deputy-surveyor, into the Surveyor-General's office, is *ipso facto*, an acceptance thereof unless a contrary intent is expressed at the time. It becomes the duty of the proper officer to examine the returns immediately, and if the dissent therefrom can be deferred for a length of time, why may it not be deferred for thirty or forty years, after making the most valuable improvements thereon?

There can be no real difference between warrants and applications *shifted*. When a survey is made under the former, on different lands from those designated therein, a warrant of acceptance is there also necessary. It may there, with equal propriety be said, that the first contract was for other lands. Yet the surveys made both on warrants and applications, shall be presumed to be with the consent of the party, unless the contrary be shewn; and indeed, in most instances, they are directed either by him or his agent. Hence, on the return of surveys, either on a warrant or location varied, a new contract for those lands may fairly be said to be agreed upon by the proprietaries and the individual, the deputy of the former having made the survey, subject to the approbation of his constituents.

M^r Kean, C. J. gave it in charge to the jury, that the plaintiff made pretensions to the land in question, on a removed application, without shewing how, or when

the survey was returned into the Surveyor-General's office, without ever having been in possession of any part of it, and without having paid one shilling of the consideration money. It was incumbent on him to have shewn, at least, when the surveys were returned, if he claims under the usage spoken of. It would seem, however, that something more is necessary, than a mere return of survey on a shifted application, to vest an equitable interest. The bare act of the deputy surveyors alone could not give a title by surveying lands on a spot not called for by the order. Until a patent issues, there is no complete legal right; and then the patent refers back to the previous application or warrant. The defendant is possessed of this patent, and has paid a large consideration therefor, and has made many valuable improvements, without any knowledge of the plaintiff's claim.

Yeates, J. subjoined. We lay down no general rule on this subject. Several suspicious circumstances attend the plaintiff's survey, and it is highly dubious whether it was actually made on the ground. It is admitted by plaintiff's counsel, that a chamber survey cannot vary the description in the application, and that the real survey must be returned into the office of the Surveyor-General. The time when the survey was returned, becomes important to the true decision, and it lay on the plaintiff to shew it satisfactorily. Unless there has been an actual survey, and that too returned before the defendant's warrant of acceptance, the plaintiff is not entitled to recover.—I agree there must be something more than an actual survey by the deputy to vest the equitable interest on a removed application. But it rather appears to me, that the return of such a survey, fairly and duly made, is *prima facie* evidence of its acceptance by the proper authority. (MSS. Reports)

The above case was cited in *Armstrong's lessee v. Morgan*, at *Huntingdon*, May, 1803, before *Yeates* and *Smith*, justices, to prove that on indescriptive orders, the legal right did not rest until the return of survey.

Yeates, J. That case is perfectly familiar to me. The applications on both sides designated other lands than those in dispute. The members of the court disagreed in opinion. *M-Kean*, C. J. held, that until the warrant of acceptance issued, no right vested in the party, on a shifted application. I thought, that the return of survey was *prima facie* evidence of the acceptance; and I still adhere to that opinion. But it has been always understood, that on an

indescriptive location, wanting precision in its terms, the interest vests from the time of survey.

Smith, J. Such has been the invariable rule on *vague* warrants or applications, on *shifted* locations the title does not vest until the return of survey into the Surveyor-General's office, unless the owner of the adverse title had notice of the survey prior to the commencement of his right. And so have been the different adjudications that I know of. (MSS Reports.)

And in the *Lessee of William Bell v. Robert Levers*, *Northampton*, June, 1800, before *Shippen*, C. J. and *Yeates*, J. MSS. Reports.—The chief justice delivered the opinion of the court, on this subject, in the following terms.

The fatal exception to the defendant's title consists in his not obtaining a return of his survey into the Surveyor-General's office, which was executed on grounds different from those called for in his application. The due diligence of persons who take up lands in this mode, forms an essential feature in constituting their rights. Hence where negligence occurs, a subsequent order of survey, industriously followed up, may defeat the operation of a former one, which, in the due course of business, might be supposed to describe the lands with convenient precision and certainty. It lies in the power of no individuals to lock up the Land-Office against the settlement of the country; or other applicants by their wilful neglect and delay.

It has long been the settled usage and practice, both before and since the Revolution, for deputy surveyors and their assistants to remove lost locations to other lands, where there were no existing, prior, opposing rights. No injury was done thereby, either to the lords of the soil, or to individuals. The pretensions of the party were thereby ascertained, and the contract was completed on his part, but subject to be annulled on the return of survey. But it has always been deemed essential in cases of this nature, that the returns of such *shifted* surveys should be made in a reasonable time, in order to prevent others from bestowing their labour and money in a fruitless pursuit of the same lands. Without such *constructive*, or *actual* notice, what footsteps remain in the proper offices, to guide the enquiries of subsequent applicants? The terms of the prior applications afford no light whatever. A mere survey on a lost location, removed from the lands for which it was originally designed, has no more efficacy and consideration, than a *pocketed* application, which, it is universally admitted, can give no

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title. Such have been the uniform decisions of the courts of justice, founded on the fair principle of plain sense and common honesty, and highly conducive to the security of landed titles. The establishment of the rule tends to certainty, and the prevention of law suits, and we are bound to follow it. S. C. 4 Dallas, 210.

While one set of judges, in one part of the State, was recognizing and deciding upon these principles; another set at the same period, in a distant county, was recognizing and adopting the same law. Thus at Mifflin, May, 20th, 1800, in the Lessee of *Abraham McKinney v. Jacob Houser*, before *Smith and Brackenridge*, justices. (MSS. Reports, 8.)

Smith, J. in the charge to the jury, pronounced as follows :

In this cause, the title of 300 acres of land is in litigation; you are informed of the situation by a view; we will lay down some general rules, of which you will judge as to their application to the facts. It is of importance that the rules of property should be certain and known, and unless they are so, no country can prosper. We have in many instances, no cases in point, regulating all disputes. We have to take property from the foundation, which is not the case in that country from which we derive our laws. Our experience is so short, that few general rules can be laid down, clear of exceptions. We must take such as our best experience warrants. That experience, then directs what I have laid down to the bar as *general rules*. I now repeat the same observations to you, and you, only, can be the judges whether they apply to the facts in this case.

1. If the location under which plaintiff claims be descriptive of the land in question, and the survey made in fact before the date of the warrant under which defendant claims, although not returned, the plaintiff would clearly be entitled to recover. So, if it describes the land with reasonable certainty.

2d. If the description in the location be *vague*, and not descriptive of other land, yet the deputy-surveyor, the public agent of the owner of the soil, must have a certain degree of discretionary power; and if he has reduced that to a certainty, which was uncertain before, and before any other appropriation of the land in question, it may, if returned in a *reasonable time*, hold the land so surveyed; much more if it described the land with convenient certainty.

3d. If the location be what is called a *lost location*, that is, the land described by it, taken by a prior title, it was

very generally the practice at the time this survey was made, (1775,) to survey other vacant lands in the vicinity, on such lost locations; and surveys were never refused to be accepted in the Land-Office, although the surveyor had no direct authority for making them. It was a title acquired by the connivance of the proprietary officers for the ease of the public, and to avoid expense; but such surveys being *fairly made, and known* to be so, by any one applying for an adverse title before he made such application, and returned without delay, the owner of such application would hold the land against the person so knowing of his title. When I say plaintiff, or defendant, I include all those under whom they respectively claim.

4th. But if the plaintiff's survey was made on a warrant or location descriptive of other land, and without the knowledge of defendant, before the warrant under which he claims was obtained, if such warrants are certainly descriptive of the land, they would hold it against such latent survey, even if the owner of it should know it, before his survey. But if such warrants are not descriptive of the land; if they are descriptive of other land, the owner of them is just in the same situation as is the owner of the location, and the same rules apply.

In ejectment, the plaintiff must recover by his own title; and though defendant has no title, his possession is good against all but him having a good title.

The plaintiff's title is a location, &c. If this location be descriptive of the lands in question, he would be entitled to recover. A location is no title, but the inception of a title; but in those early times money was very scarce; and in many cases, those who held titles by location, could not pay the fees of surveying, and many would not apply for the survey to be made, until they were able. Whether this is descriptive of the land in question you only can judge. In this case the location is for land adjoining a survey within the old purchase. It does join a survey in the old purchase; but if the survey is particular which it calls for, it is our duty to state it to you; you must consider what weight this has. We must only give you the evidence.

There is a singular circumstance respecting the survey, and I think it highly probable this dispute has arisen from gross neglect, if not misconduct in the surveyor. As he is not here, we can only state it. If he were alive, he could probably explain it. We must adhere to the general principle we have laid down, "*if the survey be fairly made.*"

Nothing more is done on this survey, except the conveyance of the land to the father of the lessor of the plaintiff.

Defendant has a warrant, &c. If his title depended on the descriptive part of this warrant, it would be very *vague*. For there can be no certainty in calling for a survey of *Reuben Haines*. In 1775, a survey was made by *C. Lukens*. We presume it was returned in April, 1776, instead of 1775, as endorsed; the rather, as the patent issued in June that year to *S. B.* Here let the original description be what it will, the rule we have laid down applies to both parties; and unless there is some obstructing circumstance, the defendant by his possession must hold the land.

If the plaintiff's title describes the land in question, and the survey fairly made, he would hold the land notwithstanding the defendant's patent. But unless you find it does so, our principle must apply. The verdict was for defendant.

This is called a leading case, and always cited and recognized, when any of the four points come in question.

And, in *Kyle's lessee v. White*, it is held by the chief justice and concurred in, that in case of a survey on a *shifted location*, it is good against a person who had actual notice before the commencement of his title, even although the survey was not returned. 1 Binney, 249.

And see the same points recognized and confirmed, in *Hepburn's lessee v. Levy*, 4 Dallas, 218, and *Miles' lessee v. Potter*, 2 Binney, 65. In which latter

case it was also held, that where on the 28th of July, 1773, *A.* took a warrant from the Land-Office, descriptive of certain land, but which was surveyed on other land the 15th of June, 1774. The survey was returned before the 26th of August, 1783; for on that day an indorsement was made on the return, by a clerk in the Surveyor-General's office, that "A. believed the survey wrong laid, and requested the surveyor to adjust it, which he had agreed to." On the 17th of September, 1787, *A.* applied to the Board of Property for an order to survey his warrant upon the land it called for, which was granted; and the survey was accordingly made on the 26th of November, 1787, and returned 27th of February, 1788.

On the 26th of October, 1772, *B.* took a warrant descriptive of certain land, and on the 19th of June, 1785, surveyed it upon land it did not call for, namely, on the land called for in *A.*'s warrant of 1773, the premises in the ejectment. The survey was returned into office, probably in 1785, or 1786, but at the latest, on the 9th of June, 1787, and was patented 14th of January, 1788.

Held, that *A.*, by his neglect, to follow up his objection to the survey made in 1774, had lost his claim to the land described in his warrant of 1773, and that *B.* was entitled to recover. That it was too long to suffer the matter to rest from August, 1783, to September, 1787, and in the mean time the land had been appropriated by *B.*

PART IV.

Of the Land-Office under the Commonwealth.

By an act passed 27th of November, 1779, (chap. 863, ante, vol. 1, page 479,) the estates of the late proprietaries of Pennsylvania, were vested in the commonwealth. The soil and lands, (with certain exceptions,) were made subject to such disposal, alienation, conveyance, division and appropriation, as to that, or any future legislature, should, or shall from time to time, seem meet and expedient, in pursuance of such law or laws, as should for that purpose, thereafter, be made and provided.

By sect. 7, all and every the rights, titles, estates, claims and demands, which were granted by, or derived from the said proprietaries, their officers or others by them duly commissioned, authorized and appointed, or otherwise, or to which any person or persons, other

than the said proprietaries, are or were, either in law or equity, by virtue of any deed, patent, warrant or survey, of, in or to any part or portion of the lands comprised and contained within the limits of this state, or by virtue of any location filed in the Land-Office at any time or times before the 4th day of July, 1776, were confirmed, ratified and established forever, according to such estate, or estates, rights or interests, and under such limitations and uses, as in and by the several and respective grants and conveyances thereof, are directed and appointed.

Sect. 8. Reserved to the proprietaries their private estates, and all the lands called or known by the name of the proprietary tenths or manors, duly surveyed and returned into the Land-Office, on or before the 4th of July, 1776, with the quit-rents, and other rents, and arrearages thereof, reserved out of

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the same, or any part thereof which had been sold.

Sect. 9. All other quit-rents were abolished.

Sect. 10. The arrears of purchase money, other than for lands within the tenths or manors, were made payable to the commonwealth.

Sect. 16. Provided for the delivering up to the state, the books, papers and documents of the Land-Office.

The celebrated case of the Springetsbury manor, already noticed, brought into the consideration of the circuit court of the United States, the 8th section of this act, for which, see *Penn's lessee v. Kline*, 4 Dallas, 402.

On the 9th of April, 1781, an act was passed, entitled, "An act for establishing a Land-Office, and for other purposes therein mentioned." (Vol. 1, pa. 529, chap. 929.)

The object of this act was, to enable the holders of existing rights to pay in their purchase money, or arrearages, and obtain patents to complete their title to the same; but not to open any office for the sale of vacant lands.

An office was instituted, consisting of the secretary of the Land-Office, Receiver-General, and Surveyor-General, into which was to be removed and safely kept all the records and papers of the former Land-Office and Board of Property; and all future grants and confirmations of land, were directed to issue from that office.

These officers were to be appointed by the General Assembly, and commissioned by the President or Vice President, in council, for five years, unless sooner removed by the assembly; were to receive such fees, as had theretofore been allowed by law, until altered by the legislature; and respectively to appoint deputies or clerks, for whose conduct they were to be responsible; and copies of records, entries and records of said office, duly attested by them, or their lawful deputies, under their hands and seal of office, are declared to be as good evidence as the original, by law, might or could be. And the Surveyor-General was authorized to appoint a deputy, or deputies, in any county, for whose conduct he was made responsible. Security to be given by each officer, for the faithful discharge of his office.

Persons entitled to any lands within the limits of the Indian purchase, by virtue of any *grant*, *warrant*, or *location*, either in law or equity, before the 10th of December, 1776, on which patents had not issued, were entitled to receive patents for the same, on payment to the Receiver-General, of the purchase money and interest thereon, or the arrearages of such purchase money, and

interest agreed on for the said lands, together with the office fees, or if no purchase money, or interest due, then on payment of office fees, and where surveys had not been returned to the former Land-Office, on any *grant*, *warrant* or *location*, issued before the 10th of December aforesaid, the owner or owners thereof, on applying to the Land-Office, at any time within one year after passing the act, and paying one third of the purchase money, and interest due thereon, was to be entitled to receive an order directed to the Surveyor-General, to have the same surveyed and returned, and then to have a patent on payment of the residue. (See the case of *Howard v. Pollock*, before cited.)

The sixth section directed that all purchase money due for lands in this State taken up, or entries thereof made, by any *grant*, *licence*, *warrant*, *application*, or *office right whatever*, before the 10th of December, 1776, should be paid in four annual instalments; and in case of neglect or refusal of paying the said quotas of purchase money, and interest at the limited times, by the space of six months, it was made lawful for the commissioners of the county where the lands lay, to issue their warrant to the sheriff to sell the lands, or so much as should be necessary, to discharge the sum due, &c. and transmit the same to the Receiver-General, and to give the purchaser a deed, on payment of the purchase money and interest.

7. But no warrant was to issue, nor any sheriff to sell lands, where actual settlements had been made by the owners thereof, and such owners had been driven off by the power of the enemy.

8. Lists of delinquents were to be transmitted annually to the county commissioners by the Land-Officers.

The time was extended, however, from time to time, as will hereafter appear, until a new system was adopted, and these impracticable parts of the law never had any operation.

By sect. 9 All lands therefore surveyed under any *grant*, *warrant*, *location*, or other office right, not returned, were directed to be returned into the Surveyor-General's office, in the space of nine months from the passing of the act, with a penalty for refusal or neglect in the deputy-surveyor, on application made to him by the owner or owners, and his legal fees being paid or tendered.

Sect. 10. Prescribes the form of patents.

Sect. 11. The lands to be patented in pursuance of this act, to be free and clear of all reservations and restrictions, and to be held in absolute and unconditional property, reserving only the fifth

part of all gold and silver ore for the use of the commonwealth, to be delivered at the pit's mouth, clear of all charges.

Sect. 12. But the act was not to be construed to extend, or give validity to any grant, warrant or location issued after the 4th of July, 1776, for any lands or lots within ten miles of the city of Philadelphia, or within three miles of any county town in the State, or to any warrant, grant or location for a greater quantity of land than 500 acres in one tract, or to any lands or lots not granted in the usual forms of the Land-Office, or to lands not within the Indian purchase.

(See the construction of this section, in *Huble's lessee v. Chew*, (in the note to chap. 933, ante. p. 15.) By a supplement to the foregoing act, passed June 25th, 1781, (chap. 936, ante. p. 7,) the word *location*, is defined, and declared to be "An application made by any person or persons for land in the office of the secretary of the late Land-Office of Pennsylvania; and entered in the books of the said office, numbered and sent to the Surveyor-General's office."

The president, or in his absence, the vice-president in council, was directed to sign all and every warrant and warrants of acceptance, resurvey and partition, as fully as the governor of the late province, or commissioner of property, might or could have done.

The Receiver-General was directed to pay all monies in hands, by virtue of the said act, to the state treasurer, once in every month, to be at the disposal of the legislature, to whom he was to account once in every year. The rate of exchange was fixed at the rate of one hundred and sixty-six and two-thirds of the currency of this State for one hundred pounds sterling.

By the act of 5th of April, 1782, (chap. 953, ante. p. 13,) the Board of Property was instituted, to consist of the president, or vice-president, and a member of the supreme executive council, appointed by council for that purpose, and the three officers of the Land-Office before named "to hear and determine in all cases of controversy on caveats, in all matters of difficulty, or irregularity, touching escheats, warrants on escheats, warrants to agree, rights of pre-emption, promises, imperfect titles, or otherwise, which heretofore have, or hereafter may arise, in transacting the business of the said Land-Office. The secretary of the Land-Office is empowered and directed to receive and enter *caveats* in his office, copies whereof to be transmitted to and entered in the Surveyor-General's of-

fice, and the said secretary, with the approbation and consent of the president or vice-president, to appoint days of hearing, and grant citations, at the reasonable request of any party or person applying for the same, or otherwise as the case may require, taking therefor, the customary fees of the former Board of Property. But no determination of this Board of Property, shall be deemed, taken, or construed to extend, in any measure whatever, to the preventing either of the parties from bringing their action at the common law, either for the recovery of possession, or determining damages for waste or trespass, but the courts of law shall remain open to the said parties, in as full and ample manner, as if no determination had ever been given."

The times limited in the act of April 9th, 1781, for the payment of the purchase monies on former rights, were extended for two years; and the time fixed for returning surveys was repealed, and the Surveyor-General was authorized to receive returns of such surveys, as shall appear to him to have been faithfully and regularly made from the late deputy-surveys, their heirs or legal representatives, for such further period as to him shall seem just and reasonable; and no action, loss or damage shall accrue to any person, by reason of neglect in complying with the said section before the passing of this act; in all other respects these sections were continued in force. (See the notes to this act, ante. p. 15.)

The act in the text opened the Land-Office for the lands purchased of the Indians under the proprietary government. The lands in the purchase of 1784-5, are regulated by other laws, and the auction system provided for in the 6th section was entirely abandoned.

The third section of this act was considered in the case of *Grant's lessee v. Eddy*, before cited. The lands claimed lay in the county of Northumberland. The defendant claimed under a number of applications and warrants, and surveys thereon made. The certificate that the lands were unimproved, was subscribed by two justices of the peace of Luzerne county, and the warrants called for lands in that county. The ridge between the east and west branches of Susquehanna, was one of the limits of the two counties, but it appeared in evidence that the same had not been run.

The defendant's counsel began their evidence by offering to read their *leading* warrant. It described "400 acres on the main branch of big *Mechoppeny* creek, beginning about 18 miles from

1784. the mouth of the said creek, where it forks on the south branch, (near which stands a birch tree marked with a blaze,) which empties into the west side of the north east branch of Susquehanna, and adjoining lands this day granted to Christopher Marshall, situate in Luzerne county.

This was objected to by the plaintiff's counsel, who contended, that under the third section of the act in the text, every applicant was bound to produce a certificate from two justices of the peace of the *proper* county, that the lands were unimproved. This, then, is an essential pre-requisite to vest a title under the commonwealth; and the certificate whereon the defendant grounds his right, might with equal propriety be given by two justices of *Alleghany* or other remote county. Besides a warrant to appropriate lands in Luzerne county, will not authorize a survey of lands in Northumberland county; (see this point ante.) and the defendant under such warrants, cannot hold lands in the latter county.

The defendant's counsel insisted, that the warrants were clearly good against the commonwealth, after they had received their purchase money, and third persons had nothing to do with the certificate. There are no negative words in the law in question, which declare that warrants issued otherwise than the law prescribes shall be void. No injury can be done to the State, because the section relied on directs, that the person applying shall produce to the secretary of the Land-Office, a particular description of the lands. The stat. 13 Eliz. c. 10, says, that all leases made by any persons therein mentioned, contrary to the tenor of that act, shall be *utterly void, and of none effect, to all intents, constructions and purposes*; yet it has been adjudged, that a lease made by Dean and Chapter against the said statute, shall not be avoided, during the life and continuance of the dean that made the lease. 3 Bac. abr. 391. 1 Black. Com. 87. So, where certain statutes have directed warrants to issue upon oath, and they have issued without oath, still they have been held good. So, a mortgage though not recorded within six months, has been resolved to be good against the mortgagor. 1 Dallas, 430. And several other cases of the same kind are put by the chief justice in delivering the opinion of the court.

By the Court. The objection appears to us to be ill grounded. Such informalities cannot, in our idea, defeat a right. The words of the act are merely *directory*, and do not avoid a warrant for want

of a certificate, or for an improper one. The object of the legislature was to prevent persons obtaining a title to lands which had been before occupied and improved, without paying interest on the purchase money during such occupation. Here that design was fully answered. The certificates both of the plaintiff and defendant shew that the lands were wholly unimproved, and no fraud could possibly be intended against the state. The boundaries between the two counties could only be guessed at.

To the cases already cited by defendants' counsel may be added. Under the act of assembly of 4. ann. it is directed, that it shall not be lawful for any sheriff to sell, or expose to sale, any lands, &c. which shall or may yield yearly rents or profits sufficient beyond all raprizes, to pay the debt and costs within seven years. Nevertheless, in the case of *Duncan's lessee v. Laurence*, at *Nisi Prius*, May, 1769, at *Carlisle*, it was resolved, that the want of an inquisition did not vitiate the sale, where it was evident, that the debt and costs could not be satisfied within seven years out of the annual rents and profits. Let the warrants be read.

By an act of the same date as the act in the text, (chap. 1089) "enabling the comptroller general to issue certificates for the balances due on the accounts of the late ranging companies, raised for the defence of the frontiers, and other accounts due to the citizens of this state." The certificates issued in pursuance thereof bore an interest of six per cent. per annum, from the 1st of July, 1783, and were made transferrable in like manner as promissory notes are, and the said certificates were declared to be receivable as specie in payment for the purchase money of lands, either within the late Indian purchase, or the new purchase when made, agreeably to the regulations of the act in the text.

On the 21st of December, 1784, an act was passed entitled "An act to alter and amend an act of assembly, entitled 'An act for opening the Land-Office, for granting and disposing of the unappropriated lands within this state.'" (Post. chap. 1111.)

At the passing of this act, the result of the treaty at Fort Stanwix, in the month of October preceding, was known: and that *Pine* creek, instead of *Lycoming*, was the western boundary on the north side of the West Branch of Susquehanna, of the purchase of 1768, and that *Pine* creek was made the boundary of deeds of October and January, 1784 and 1785, in consequence of the explanations and declarations made by the Indians at Fort Stanwix.

The following facts and circumstances were also well known.

There existed a great number of locations of the third of April, 1769, for the choicest lands on the West Branch of Susquehanna, between the mouths of *Lycoming* and *Pine creeks*; but the proprietaries, from extreme caution, the result of that experience, which had also produced the very penal laws of 1768, and 1769, and the proclamation already stated, had prohibited any surveys being made beyond the *Lycoming*. In the mean time, in violation of all law, a set of hardy adventurers, had from time to time, seated themselves on this doubtful territory. They made improvements, and formed a very considerable population. It is true, so far as regarded the rights to real property, they were not under the protection of the laws of the country; and were we to adopt the visionary theories of some philosophers, who have drawn their arguments from a supposed state of nature, we might be led to believe that the state of these people would have been a state of continual warfare; and that in contests for property the weakest must give way to the strongest. To prevent the consequences, real or supposed, of this state of things, they formed a mutual compact among themselves. They annually elected a tribunal, in rotation, of three of their settlers, whom they called *fair play men*, who were to decide all controversies, and settle disputed boundaries. From their decision there was no appeal. There could be no resistance. The decree was enforced by the whole body, who started up in mass, at the mandate of the court, and execution and eviction were as sudden, and irresistible as the judgment. Every new comer was obliged to apply to this powerful tribunal, and upon his solemn engagement to submit in all respects, *to the law of the land*, he was permitted to take possession of some vacant spot. Their decrees were, however, just; and when their settlements were recognized by law, and *fair play* had ceased, their decisions were received in evidence, and confirmed by judgments of courts.

The facts and circumstances above stated furnish the history of many of the provisions of this act of December, 1784, which follow.

The legislature declare, that the directions in the act in the text "did not give nor ought to be construed to give, to the said commissioners, any authority to ascertain, definitively, the boundary lines aforesaid, and that the lines of the purchase of 1768, striking the line of the West Branch of the river Susquehanna, at the mouth of *Lycomick*, or *Lycoming* Creek, shall be the boundaries of the same purchase, to all legal intents and purposes, until the general assembly shall otherwise regulate and declare the same.

The act in the text, so far as it autho-

zes the laying out the lands in the new purchase, in lots, and selling them by public auction; and so far as it directs, and enables the officers of the Land-Office to give credit for any part of the purchase money, or to take bonds for the same, is repealed.

It was declared that the Land-Office should be opened for the new purchased lands from and after the 1st of May, 1785, and not sooner, for applications for lands within the same (the lands appropriated for the redemption of depreciation certificates, and the donation lands to the officers and soldiers of the Pennsylvania line only excepted,) at thirty pounds for every hundred acres, and in proportion for greater, or less, quantities; such application, or the survey thereof to be made, not to exceed one thousand acres and allowance, &c.; and every applicant for any of the same lands, shall, before the warrant for the same issue, produce to the secretary of the Land-Office, an acquittance, signed by the Receiver General, that the purchase money has been paid; and the bills of credit, of the 20th of April, 1781, gold and silver, and the certificates described in the act in the text, shall be received in satisfaction of all purchase money.

Warrants issued in pursuance of this act, were not to be confined to any particular place, but might be located upon any vacant land where the applicant should think fit, (except as aforesaid,) the survey not to exceed the number of acres expressed in the warrant; and the same to be located and surveyed in one tract or parcel.

And whereas divers persons, who have heretofore occupied and cultivated small tracts of land, without the bounds of the purchase made as aforesaid in the year 1768, and within the purchase made, or now to be made, have, by their *resolute stand and sufferings during the late war*, merited, that those settlers should have the pre-emption of their respective plantations, it is enacted—That all and every person, or persons, and their *legal representatives*, who has, or have heretofore settled, on the north side of the West Branch of Susquehanna, between *Lycomick* or *Lycoming* Creek on the east, and *Tyagabion*, or *Pine Creek*, on the west, as well as other lands within the said residuary purchase from the Indians, of the territory within this state (excepting always the lands herein before excepted,) shall be allowed a right of pre-emption to their respective possessions, at the price aforesaid.

But no person was to be entitled to such pre-emption, unless he had made such actual settlement before the year 1780, and no claim was to be admitted, to or under any such person, for more than three hundred acres of land, with the usual allowance for roads, to be sur-

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veyed together, and in one tract, nor unless application for the same be made, and the consideration thereof tendered to the Receiver-General of the Land-Office, on or before the 1st of November, 1785.

The following cases have been decided under the pre-emption clause of this act.

Lessee of John Hughes v. Henry Dougherty, Northumberland, October, 1791, before *Shippen* and *Bradford*, justices MSS. Reports.

Ejectment for 324 acres, part of the Indian lands.

Plaintiff claimed under a warrant issued on the 2d of May, 1785, for the premises, and a survey made thereon, 10th of January, 1786 — The defendant on the 20th of June, 1785, entered a caveat against the claims of the plaintiff, and on the 5th of October following, took out a warrant for the land in dispute, on which he was then settled. Both claimed the pre-emption under the act of 21st of December, 1784. And on the evidence given, the facts appeared to be ;

That in 1773, one *James Hughes*, a brother of the plaintiff, settled on the land in question, and made some small improvement. In the next year he enlarged his improvement, and cut logs to build a house. In the winter following, he went to his father's in *Donegal*, in Lancaster county, and died there. His elder brother, *Thomas*, was at that time settled on the Indian land, and one of the "*Fair play men*," who had assembled together, and made a resolution, (which they agreed to enforce as the law of the place,) that "if any person was absent from his settlement for six weeks, he should forfeit his right."

In the spring of 1775, the defendant came to the settlement, and was advised by the *Fair play men*, to settle on the premises which *Hughes* had left. This he did, and built a cabin. The plaintiff soon after came, claiming it in right of his brother, and aided by *Thomas Hughes*, took possession of the cabin. But the defendant collecting his friends, an affray ensued, in which *Hughes* was beaten off, and the defendant left in possession. He continued to improve; built a house and stable, and cleared about ten acres. In 1778 he was driven off by the enemy, and went into the army. At the close of the war, both plaintiff and defendant returned to the settlement, each claiming the land in dispute.

Shippen, J. in the charge of the court, said, The dispute here is between a first improvement, and a subsequent, but much more valuable improvement.

But neither of the parties has any legal or equitable right but under the act of 21st of December, 1784. The settlement on this land was against law; it was an offence that tended to involve this country in blood. But the merit and sufferings of the actual settlers cancelled the offence, and the legislature, mindful of their situation, provided this special act for their relief. The preamble recites their "resolute stand and sufferings" as deserving a right of pre-emption. The legislature had no eye to any person who was not one of the occupiers after the commencement of the war, and a transient settler removed, (no matter how,) is not an object of the law. This is our construction of the act.—*James Hughes*, under whom the plaintiff claims, died before the war; the other occupied the premises after, and in the language of the act, "stood and suffered." If this construction be right, the case is at an end. Besides the plaintiff claims as heir of *Thomas*, who was the heir of *James*, the first settler. I will not say the *Fair play men* could make a law to bind the settlers; but they might, by agreement, bind themselves. Now *Thomas* was one of these, and was bound by his conduct, from disputing the right of the defendant.

The warrant, it seems, is taken out in the name of the father, and, it is said, as a trustee for his children. It is sometimes done for the benefit of all concerned. If this be the case, it may be well enough; but still it is not so regular as it might have been. The jury found a verdict for the defendant.

Lessee of Morgan Sweeney v. John Toner, at the same court.

Shippen, J. charged the jury as follows:

It appears, that both plaintiff and defendant have warrants for the land in dispute, the defendant's being one day older than the plaintiff's, and the question is, which of them, on the facts laid before us, is entitled to pre-emption, under the act of 21st of December, 1784.

The facts are clear; *Toner* went upon the Indian land in 1773, and made a settlement; but he exchanged this for another, on which he continued with a view to make a settlement for his family, till the war broke out, and there was a call for soldiers. He inclined to list, but was afraid of losing his land, and his friends attempted to dissuade him. However they promised to preserve his settlement for him, and he inclined.

In 1775, the plaintiff went up, and there was some contract in writing, by way of lease, between him and *Toner*,

and by virtue of that, he entered into possession of the premises. The terms of the lease were, that he should make certain improvements on the place for the benefit of *Toner*. This lease was deposited in the hands of a third person, and the plaintiff's wife, by a trick, got possession of it; and she and her husband determined to destroy it, and so make the place their own. They continued there until driven off by the enemy. During all this time *Toner* was absent from the settlement but in the service of his country. Here the question of law arises.—It was attempted to confound this case with that of *Hughes* and *Dougherty*. There the court considered that *Hughes* died before the war commenced, and that the object of the act could never reach to him. The legislature never intended to obliterate the offence of these settlers who did not continue their possession during the war. *Dougherty* settled in the place of *Hughes*, but in his own right, and brought himself within the meaning and intention of the act. That case is very distinguishable from this. Here a man continues his improvement after the commencement of the war, till, at the call of his country, he leaves it. He did not by this relinquish his residence; and we consider his merit as equal with that of those who staid. We think he is an object within the spirit of the act. Besides, the plaintiff was the tenant of the defendant, and kept possession for him, and his improvements were *Toner's*. The plaintiff has also declared, that he made an improvement for himself in another place. This is the law, and the facts we submit to you. Verdict for the defendant. (MSS. Reports.) S. C. with the arguments of counsel. 2 Dallas, 129.

In *Duncan's* lessee v. *Walter*, the case was; a person of the name of *Campbell*, being a settler within the description of the act, died in 1731, before the act passed. His heir had sold the premises, being part of the pre-emption district, to the plaintiff, and his administrators, without any order of court, had sold them to the defendant; and both plaintiff and defendant had taken out warrants within the limited time, though neither had obtained a patent. Hence the question arose at the trial, and was reserved for the opinion of the court, whether the right of pre-emption, granted in the terms of the act, should vest in the real, or the personal representatives of the grantee?

After argument, the court were of opinion, that by the words "legal representatives," heirs, or alienees, were to be understood; for, though the expres-

sion might, in the abstract, appear equivocal, and ambiguous, it was explained by the subject matter; and land, *ex vi termini*, importing real estate, the legal representative must, in legal contemplation, be the heir, and not the administrator. Judgment for the plaintiff, accordingly; 2 Dallas, 205.

And in *Cook's* lessee, v. *Epple*, in the supreme court, January term, 1794. It was determined, that in an ejectment for lands, claimed by pre-emption under this act, it was indispensably necessary to shew in evidence, that the lessor of the plaintiff had paid or tendered the consideration thereof to the Receiver-General, on or before the 1st of November, 1785. (MSS. Reports.)

In *McConnel's* lessee, v. *Porter*, a pre-emption warrant granted to the plaintiff in ejectment, under this act of December, 1784, though he had not been on the pre-emption, or Indian lands, since the commencement of the late war, was held to intitle him to recover against a defendant who had not taken out his warrant until after the 1st of November, 1785. In the supreme court, September term, 1794. (MSS. Reports.)

The lands set apart for the redemption of the depreciation certificates, and for donation to the officers and soldiers of this state, in the federal army are described, ante. page 62-64, (chap. 996,) and see the act for distributing the donation lands, post. chap. 1128, and the notes thereto subjoined.

See the act for the limitation of actions to be brought for the inheritance or possession of real property, post. chap. 1154. and the notes thereto subjoined.

The act to provide further regulations, whereby to secure fair and equal proceedings in the Land-Office, and in the surveying of lands, (chap. 1153,) was passed on the 8th of April, 1785.

SECT. 2. The office was to open on the first day of May, 1785, and to prevent all undue preferences;—from and after the time assigned, until the end of the tenth day thereafter, being the eleventh day of the month, the secretary of the Land-Office, upon the Receiver-General's receipt being shewn to him for the whole purchase money, and not otherwise, was to receive all applications made to him for lands in the said late purchase, not exceeding one thousand acres in one application, numbering them respectively, from number one, after the common progression, to the last which should be received within the same ten days; every application to set forth in words at length, and not in figures only, the number of acres asked by each applicant respectively: a lottery was then to be made, and preference or pri-

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ority to be given to the warrants accordingly, which were to be numbered according to the decision of the lottery, and to be dated on the day on which the drawing should be finished. And all applications made after the said ten days, for lands within the said late purchase, made as above directed, were to have priority in the order in which they came to the secretary's hands, and be numbered accordingly, and not otherwise.

Sect. 3. All warrants issued for lands in the said purchase, were to be directed by the Surveyor-General, to the deputy-surveyor of some one district within the same purchase, that it might be duly executed, and the quantity of land therein specified, surveyed and located, according to the tenor of such warrant; but if land, to the satisfaction of such warrant owner could not be found within such district, the deputy-surveyor, on the desire of the person intitled to the same, was to certify, by writing indorsed on the warrant, in the presence of two subscribing witnesses, that the same had not been executed within his district, and then re-direct the same to the deputy-surveyor of some other district, who, upon such warrant being produced to him, so certified, was to proceed upon and execute the same, in like manner and with the like effect, as if it had been so directed to him by the Surveyor-General.

Sect. 4. No deputy-surveyor was to execute any such warrant, unless it was directed to him as aforesaid, nor was any deputy to proceed to make surveys upon any warrant within the said late purchase, until the expiration of thirty days after the date of the warrant, which for preference or priority, was dependant on the lottery; and during the last twenty of the said thirty days, each deputy within the said late purchase, was to keep his office open, and personally attend therein, at least six hours in every of the said twenty days, (Sundays excepted,) for the purpose of receiving the warrants to be issued, and directed as aforesaid, and every deputy was directed to certify in writing, to the Surveyor-General, on or before the first of May, the place where he was to keep his office open for the purpose aforesaid, that all persons who might apply for lands might be duly informed thereof; and every deputy who received any such warrant, was directed to make fair and clear entries of all such warrants put into his hands, in a book to be provided by him for that purpose, distinguishing therein the names of the grantees, quantities of land, number and date of each warrant, and the day on which he received the same respectively, and whatever should

be done concerning such warrant; which book was to be open at all seasonable hours to every applicant, who was entitled to copies of any entry therein, to be certified as such, and signed by such deputy-surveyor.

Sect. 5. After thirty days from the date of every such warrant, the priority of which depended on the lottery aforesaid, but not sooner, the deputy to whom the same was directed was to proceed to execute it in the usual manner, if requested by the owner or his agent, giving preference always to the lowest in number of those unexecuted warrants which had come to his hands, in case the owner, or his agent was ready to proceed with him, and direct him to the place where he desired him to execute it.

Sect. 6. But none of the said warrants which were not finally lodged and left with one of the deputy surveyors of the lands within the late purchase, for survey and location within the district of such deputy, before the thirty days were expired, were intitled to priority, but were to be considered as posterior to any warrant that had been lodged within the thirty days, and to be surveyed and located accordingly.

Sect. 7. Any person having a right to a warrant for lands within the said late purchase, who should desire it to be located to a particular place, the deputy, in whose hands the warrant should be, was to make an entry thereof in his book aforesaid, and afterwards to survey it accordingly, unless some person claiming under a warrant intitled to priority by the lottery, should insist on having his surveyed at the same place, in which case the warrant so located and superseded, was intitled to a second location as before, liable to a claim under another prior warrant, as before, and so, *toties quoties*, till the same should be undisputed. But any person, before survey made, might renounce his location, and withdraw his warrant, and have it certified, redirected and delivered to another deputy within the same purchase, and again, in the same manner to another deputy, till the quantity of land therein mentioned was surveyed and established.

Sect. 8. All warrants issued after (the priority of which depended on,) the drawing of the lottery, for lands within the said purchase were to be executed in the order, and to have preference of survey, as they were earliest delivered to the deputy of the district to whom they were directed, who was to make survey thereon; and for that purpose the Surveyor-General was to register the warrants in the order they came to his office. And every survey of lands within

the said purchase, made in pursuance of this act, and of former acts for opening and regulating the Land-Office, was to be duly returned into the Surveyor-General's office, as soon as conveniently might be, after survey made, on payment or tender of the surveying fees. And surveys made on or before the thirty-first of December, in any year, and not returned into the Surveyor-General's office on or before the last day of March, in the year next following, were to be void as to future surveys sooner returned and filed in the office of the Surveyor-General; and if such avoidance happened by the neglect or default of the deputy who surveyed the same, he was declared to be answerable to the party damaged, for all damages he sustained by such neglect, and the party was to be entitled to a new warrant, to survey other land elsewhere to satisfy his original application.

Sect. 9. All surveys to be returned on any warrant issued after passing this act were to be made by actual going on and measuring the land, and marking the lines to be returned upon such warrant, after the warrant authorizing such survey shall have come to the hands of the deputy-surveyor to whom it was directed. And every survey made *theretofore*, was declared to be clandestine and void, and of no effect whatever. Every deputy, on request, was directed to give a written receipt, signed by him, to the person delivering the warrant for the fee of six pence, setting forth the day and year when, and the order in which such warrant came to his hands, and the grantee's name and surname the number of acres to be surveyed thereon, and the number of the warrant.

Sect. 10. Every deputy, in the month of February, in every year was directed to make a general list (to be returned into the Surveyor-General's office,) of all the warrants on which he made surveys during the preceding year, setting forth in a summary way, the quantity of land surveyed on each warrant, distinguishing it by its number, date, and name of the grantee, and situation of every tract surveyed, respectively.

Sect. 11. Deputies were to be appointed by the Surveyor-General, subject to the approbation of council, for whom the Surveyor-General was to be answerable. Each deputy to give bond with two sureties; the land officers and deputy-surveyors to take a certain, prescribed oath, &c.

Sect. 12. Districts were to be formed, and their boundaries declared by the Surveyor-General, with the approbation of council, but they might afterwards be altered.

Sect. 13. The islands in the *new* purchase, in both branches of Susquahanna, Ohio, Allegheny & Delaware. The appropriated lands northwest of the rivers Ohio and Allegheny, and the pre-emption to one thousand acres at the forks of Sinnemahoning, granted to general James Potter, were reserved from application, and the islands were directed to be sold by public auction, and all occupancy of, or claims thereto, were declared void, saving the pre-emption of Montour's island to general Irwin.

Sect. 14. The punishment was prescribed for neglect and refusal to perform any duties enjoined by this act, (besides being liable in damages to the party grieved,) or for any other misbehaviour, abuse of trust, or fraud in any officer, &c.

Sect. 15. Any survey made by any deputy-surveyor, out of his proper district, was declared void; the manner of making surveys was prescribed; and surplus lands, not exceeding one tenth of the number of acres mentioned in the warrant, besides the usual allowance for roads, were admissible in the returns, and might be patented, paying *pro rata* for such surplus.

Sect. 16. The fees receivable in the Land-Offices were also prescribed; but this part was repealed by act of 20th of April, 1795, and new fees established.

Sect. 17. The fees collected were directed to be paid over to the state treasurer, and the salaries of the officers, respectively, were fixed.

Under this act, it has been adjudged, that a warrant dated in 1792, shall be preferred to a later one in 1793, though the latter was first delivered to the district surveyor, if the same was *not actually surveyed* when the oldest warrant came to his hands, and the party was ready with his hands and provisions for the survey. *Lessee of Willinkand others. v. Morris* and others, supreme court, December, 1800. (MSS. Reports.)

In the *Lessee of M'Rhea v. Plummer*, 1 Binney, 227. The question was, whether, where a survey had been made under legal authority, (being part of the depreciation lands surveyed in 1785, and 1786, and divided into tracts, which remained unsold by the state, and open to purchasers under the act of 3d of April, 1792,) a warrant coming *afterwards* to the hands of the deputy, may be applied by him to the survey already made, without running and marking the lines anew, notwithstanding the 9th section of the act of 8th of April, 1785.

Tilghman, C. J. delivered the opinion of the Court. As it is admitted that the commonwealth had received the full

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price of the land, that there has been at *some time* an accurate survey marked on the ground, and that when the appropriation was made for the plaintiff, there was no settler on the land, nothing but very clear and positive law ought to deprive the plaintiff of his purchase.

The objection to the survey is founded on the 9th section of the act of 8th of April, 1785. I shall give no opinion at this time whether the provision of this section extends to surveys made under the act of 3d of April, 1792. I understand, that in the case of *Wright's lessee v. Wells*, tried at *Nisi Prius*, at *Washington*, before the late C. J. *McKean* and judge *Yeates*, it was held that it was restrained to lands then lately purchased by the commonwealth, and intended to be sold in a short time. But supposing it extended to all surveys on warrants issued after the passing of that act, though the present case may fall within the words, it is evident that it is not within the spirit and intention of the act. The intent was to prevent all persons, surveyors as well as others, from making surveys without authority, and to declare all surveys so made, void. Now the surveys of the depreciation lands were made under the authority of the State. Let us compare this case with others that have been decided, and concerning which there is no question. Suppose a surveyor receives a warrant, and the land to be surveyed on it is bounded on three sides by the lines of other tracts, which he has surveyed *before*. It is not contended that he is obliged to run these three lines over again; and why?—Because it would be useless trouble, those lines having been run and marked by *legal authority* before; and yet he does not comply with the words of the act, which require him to run the lines, and mark them, after the warrant comes to his hand. Here then is an implied exception from the words, in order to comply with the spirit of the act. Nothing more is to be done in the case before us. What mischief can arise from this construction? It is said the actual settlers will be deceived, because they find no marks made since 3d of April, 1792. But if they take due pains they cannot be deceived. It is in vain for any man to seek for proper information by hunting for marks on the ground, without applying to the deputy-surveyor, who is obliged to keep books for the purpose of information. The marks on the ground give no satisfaction, for they may have been made by unauthorized persons. But the surveyor's books, combined with the marks

on the ground, will make every thing clear. The entries in the books of the surveyor would have shewn that *this land* had been surveyed; and if upon comparing the marks on the ground with the surveyor's entry, a difficulty had occurred, because the marks appeared older than the entry, this would have been at once explained by the surveyor, on application to him. Every prudent and honest man would naturally make such an application before he expended his time, labour and money in making a settlement. If in any case it has happened that a settler has in fact been deceived, even through his own inadvertency; I can only express my hope, that the warrantee will take that circumstance into consideration, and let him have a reasonable portion of the land on moderate terms. But at present we are called upon to decide the law. Three judges were of this opinion *Brackenridge, J.* dissented. "I cannot assent to the opinion delivered by the C. J. The act of 1785, I have no doubt, extends to this case; and although I will not say that an omission to go on the ground and mark the lines avoids the survey, as this part of the section may be considered *directory*; yet, if the survey is not made *after* the warrant comes to the hands of the deputy-surveyor, it is absolutely *void*; for that part of the section is *positive*, and not *directory*. In this case the survey was not made *after* the warrant was delivered to the deputy-surveyor.

In *Woods v. Ingersoll*, 1 Binney, 149, the chief justice, in delivering the judgment of the court, says, upon the 9th section aforesaid—"Although the *directing* part of the section is not strictly complied with, still the survey may be sufficient to entitle the warrantee to a patent, provided the surveyor has been upon the ground, and run lines sufficient to identify the tract, and ascertain the quantity contained in it. I mention this, because it has been insinuated, although the point was not formally made, that perhaps the surveys made by the plaintiff were void, inasmuch as all the lines of each tract were not run and marked. I understand that the construction which I have put upon the 9th section of the act of assembly in question, has always been, and it still is, held by all the judges of this court. And it is of consequence that there should be no misunderstanding on the point, as the titles of a vast number of persons, who have taken up lands from the commonwealth, and paid for them, would be shaken by a contrary opinion.

The case of the Lessee of *Alexander Wright v. Benjamin Wells*, was as follows:

Ejectment for a tract of 440 acres of land, called "Danger," situate on Itacon creek.

The lessor of the plaintiff founded his legal title on a warrant dated 16th March, 1786; a survey thereon by John Hoge, deputy-surveyor, and a patent dated 7th of September, 1785.

The defendant's counsel objected that the survey was made by one who had no authority; that the lands lay within the district of *Pressly Nevil* and *Matthew Ritchie*, and that by the 15th section of the act of 8th of April, 1785, it is provided that no deputy-surveyor shall go out of his proper district, and every survey made by any deputy-surveyor out of his proper district shall be void and of none effect.

The court after full argument, ruled, that the 15th section of the act related solely to the lands lately purchased at *Fort McIntosh*. The general object of the legislature was to introduce a new system, and secure fair and equal proceedings as to the lands newly purchased from the Indians, but did not respect the lands included in the old purchase; and such has been the practice under the law. The patent recognizes the authority under which *John Hoge* proceeded to make the survey. Verdict for the plaintiff. (MSS. Reports.)

By an act entitled "An act to compel the speedy settlement, and the paying or securing of the debts due to this State for lands held by location, or other office right, obtained before the tenth day of December one thousand seven hundred and seventy-six, and yet remaining unpatented," passed 16th of September, 1785, (chap. 1169,) it was enacted, that all persons who were, or should be, entitled in law or equity, to any lands in the old purchases, by virtue of any grant, warrant, location, or other office right whatsoever, made or accrued before the 10th of December, 1776, upon which patents had not issued, might, and such persons were enjoined and required as soon as conveniently might be, to settle and adjust the sums due to the State for the purchase money of such lands respectively, and to pay or secure the same by giving bond for the whole, or residue thereof, as the case might be, to the president of council for the time being for the use of the State, conditioned for the payment of the sum due in five equal annual instalments, together with the whole interest due at each and every of the said periods respectively; the

first payment to be made on or before the 10th of April, 1787; each instalment to be recoverable by suit, as they respectively should become due; and on such bond being lodged with the Receiver-General, the party was entitled to receive a patent on payment of the legal office fees; a mortgage to be taken by the Receiver-General, in every case, to secure such payments, and the sum due, and conditions of payment were directed to be endorsed on every patent. Such mortgage to be recorded in the office of the secretary of the Land-Office, &c.

Actual settlers on the northern and western frontiers of the State, who had been driven by the Indians from their habitations in the course of the late war, or their legal representatives, were to be exonerated from interest from the 1st of January, 1776, to the 1st of July, 1784, provided they paid, or secured the payment of the purchase money, in the manner, and within the time herein before mentioned. All persons applying for the benefit of such exoneration, to prove by the oath of a credible person, that he, or the person in whose right he claimed, was in the course of the war, actually driven from his habitation on the said land, through force or fear of the Indians, and that the said plantation was consequently left without inhabitants.

Any person refusing, or neglecting to comply with the terms of this act, on or before the 10th of April, 1787, was declared to be barred and precluded from the benefit intended by this act, with respect to further time of payment, and to be proceeded against for the monies due, by sale of the lands, according to law, without delay.

The time for patenting has been extended by successive acts; and the only operative part of the foregoing act is the *exonerating* section.

The act passed December 30th, 1786, (chap. 1248,) "for giving, during a limited time, a right of pre-emption to the actual settlers within that part of this State, which is within the territory purchased by the king of Great Britain, of or from the Indians, at *Fort Stanwix*, in the year of our Lord one thousand seven hundred and sixty-eight," after reciting that the act of 1st of April, 1784, made no reservation, nor gave any right of pre-emption to settlers in the purchase of 1763, but it was left in the power of all persons whatever to make application, and take out warrants for those lands, enacted, that no warrant should issue from the Land-Office of this State, for any tract of land on which a settlement was made, unless so

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1784. such person, or persons, respectively, who had made the settlements, or their legal representatives, until the 10th of April, 1788. And if any such warrant issued otherwise than aforesaid, it should be deemed to have issued by surprise, and should be of no avail in law.

Provided always, that by a settlement shall be understood, an actual personal, resident settlement, with a manifest intention of making it a place of abode, and the means of supporting a family, and continued from time to time, unless interrupted by the enemy, or by going into the military service of this country during the war.

This act to extend only to the purchase of 1768, and no settler to have the pre-emption of any tract, exceeding 400 acres, by reason of any such settlement.

By an act for facilitating the redemption of the bills of credit, emitted in the year 1781 & passed 12th of March 1787, (chap. 1272.) Sect. 2. It was enacted, That the time limited in the act of 16th of September, 1785, (chap. 1169,) for paying or securing the payment of the purchase money of unpatented lands, should be extended to the 10th of April, 1788,—and the periods prescribed for the payments to become due on the securities therein directed to be taken were extended to one year later than the periods in the said act mentioned.

Every person entitled to demand a patent, according to the direction of the said act, on paying one fourth part of the amount of the purchase money, or the arrearages then due, with interest thereon, in lawful money of this state, or in bills of credit emitted by the act of 7th of April, 1781, together with the whole of the office fees, in current lawful money, might, at his option, pay the residue and interest, in lawful money, or the bills of credit aforesaid, or in certificates of debt due from this state, then by law entitled to draw interest from the treasury, commonly called funded certificates, on which certificates interest should be computed, and allowed till the time of such payment; *Provided* such payments were made and completed before the 10th of April, 1788.

All who neglected or refused these terms, on or before the said 10th of April, were declared to be barred and precluded from all benefit intended by this act, with respect to further time of payment, and the mode of such payment, and forthwith to be proceeded against, by sale of his land, according to law, as if this act had not been made.

The terms of the above act were extended for one year, by an act passed 29th of March, 1788, (chap. 1337.)—And the act of 30th of December, 1786, was also extended to the 10th of April, 1789, and see chap. 1391, 1491, 1565, 1598.

By an act passed 3d of October, 1788, (chap. 1355,) entitled "A supplement to

an act entitled "An act for granting and disposing of the unappropriated lands within this state." The price of the unappropriated lands of this state, within the seventeen districts of the counties of Northumberland and Luzerne, part of the last purchase, was reduced to twenty pounds for every hundred acres, payable before the warrant issued, in gold and silver money, or in bills of credit of the 16th of March, 1785, or in certificates of this state, which had been, or should be, issued according to law, and the bearers whereof were entitled to receive of the treasurer, an annual interest thereon, after the rate of six per cent. half yearly, and no other satisfaction for the said price. But this act not to extend to any lands which had been, or which should be surveyed by virtue of any warrant before issued for surveying of lands within the said purchase.

By an act passed 20th of November, 1789, (chap. 1456.) So much of any act or acts, as authorized or directed the receiving any certificates, issued or granted by the United States, in payment of any lands purchased, or to be purchased of this commonwealth, was repealed.

By an act passed 19th of Feb'y, 1790, (chap. 1469,) the Land Officers are directed to pay the fees by them collected, quarterly to the treasurer, and account for the same upon oath or affirmation, to be administered by the treasurer.

By an act passed 29th of March, 1790, (chap. 1491,) the Receiver-General was authorized to receive any part of the purchase money for lands in the old purchase, one fourth in lawful money of the state, or in bills of credit emitted by the act of 7th of April, 1781, and three fourths in depreciation certificates, or other certificates of original state debts, on which interest was payable annually at the treasury of the state, provided each payment so made should not be less than one fourth part of the original purchase due on such lands.

On the 8th of January, 1791, (chap. 1511,) the Board of Property was organized under the new constitution, with the same powers as before; and the Master of the Rolls was constituted a member of the Board with the three Land Officers—any three of them to form a Board. The secretary of the Land-Office to appoint days of hearing, and grant citations. All warrants to be under the lesser seal of the state, and signed by the governor. The form of patents prescribed, and to be under the great seal—See the notes to chap. 953 *ante*, pa. 14.

On the 29th of March 1792, (chap. 1602,) an act was passed, allowing a credit for unsatisfied warrants. It was provided, that where any warrants since the first of April, 1784, had issued, or should thereafter issue from the Land-Office, and had not been, or could not be,

executed in the whole, or in part, by reason that the lands therein described, or some part of them, had been previously appropriated by or for any other person, or persons according to law, or having been executed, interfered with some prior appropriation, as aforesaid, the deputy surveyor of the district, or county, at the reasonable request of the party, his heirs, executors, administrators or assigns, was directed to certify to the Surveyor-General's office, whether any, and how much of the lands in the said warrant described, had not been, or could not be surveyed, for the reasons aforesaid, or having been surveyed, interfered with prior surveys or appropriations; and the Surveyor-General, having proof of the same, was enjoined, upon the like reasonable request, to certify to the Receiver General, the number of acres that remained unsatisfied, on any warrant issued after the first of April, 1784.

And whenever it should appear to the Receiver-General, by original receipts or other legal voucher, or by entries made in his books, that any person had paid into the Land-Office any monies or certificate for lands granted to him, by virtue of warrants issued after the 1st of April, 1784, and which he had not obtained; or that he had paid any monies or certificates over and above what was due to the commonwealth for the lands obtained by virtue of such warrants, he was enjoined to carry such money, or balance to the credit of such person, his heirs, executors, administrators or assigns, in payments then, or thereafter to become due, for the purchase of any lands within the commonwealth, together with lawful interest for the same, from the time of the original payment, to the time of such credit being applied for and made.

But, by an act passed the 6th of March, 1793, (chap. 1648.) So much of the above act, as authorized the allowance of interest, on any money or balances, carried to the credit of any person, by virtue of the above act, from the time of the original payment, to the time of credit being applied for and made, was repealed: provided, that where such money had been paid, or balances had become due, prior to the passing of this supplement, interest was to be allowed upon such money, or balances, from the time of making the original payments, respectively, until the day of passing this supplement, and no longer.

And, from and after the 1st of January, 1795. All persons who should not previously apply for, and procure a credit to be entered in the books of the Receiver-General, for any such money, or balances, was thenceforth to be forever barred and excluded from all claim, right, or title thereto, and to every part and parcel thereof, and from any benefit or advantage, which

could, or might have been obtained, by, from or under the said recited act; and all such monies, or balances, and the right and claim thereto, were declared from thence to become, and be, forever, forfeited and cancelled.

On the 3d of April, 1792, (chap. 1613,) an act was passed, entitled, "An act for the sale of the vacant lands within this commonwealth."

Sect. 1. The price of all the vacant lands, within the purchase of 1768, and the preceding purchases, excepting such lands as had been previously settled on, or improved, was reduced to the sum of fifty shillings for every hundred acres; and the price of vacant lands, within the limits of the purchase of 1784, and lying east of *Allegheny* and *Conewango* Creek, was reduced to the sum of five pounds for every hundred acres: and the said lands were offered to any person or persons applying for the same, at the price aforesaid, in the manner and form accustomed under the laws in force.

Sect. 2. All the lands lying north and west of the rivers *Ohio* and *Allegheny* and *Conewango* Creek, except such parts thereof as had been, or thereafter should be, appropriated to any public, or charitable use, were offered for sale "to persons who will cultivate, improve and settle the same, or cause the same to be cultivated, improved and settled, at and for the price of seven pounds ten shillings for every hundred acres thereof, with an allowance of six per centum for roads and highways, to be located, surveyed and secured to such purchasers, in the manner herein after mentioned."

Sect. 3. "Upon the application of any person who may have settled and improved, or is desirous to settle and improve, a plantation within the limits aforesaid, to the secretary of the Land-Office, which application shall contain a particular description of the lands applied for, there shall be granted to him a warrant for any quantity of land within the said limits, not exceeding four hundred acres, requiring the Surveyor-General to cause the same to be surveyed for the use of the grantee, his heirs and assigns, forever, and make return thereof to the Surveyor-General's office, within the term of six months next following, the grantee paying the purchase money, and all the usual fees of the Land-Office."

Sect. 4. The Surveyor-General to divide the lands offered for sale into districts, and appoint one deputy for each district, who shall give bond and security as usual, and reside within, or as near as possible to, his district, and within sixty days next after his appointment, certify to the Surveyor General the place where he shall keep his office open for the purpose of receiving warrants, that all persons who

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may apply for lands may be informed thereof. And every deputy-surveyor, who shall receive any such warrant, shall make fair and clear entries thereof in a book, to be provided by him for the purpose, distinguishing therein, the name of the person therein mentioned, the quantity of land, date thereof, and the day on which he received the same, which book shall be open at all reasonable hours, to every applicant, who shall be entitled to copies of any entries therein, to be certified as such, and signed by the deputy-surveyor, the party paying one quarter of a dollar therefor.

Sect. 5. The deputy, at the reasonable request, and at the cost and charges of the grantees, to proceed to survey the lands in such warrants described, as nearly as may be, according to the respective priorities of their warrants; but they shall not survey any tract of land, that may have been actually settled and improved prior to the date of the entry of such warrant with the deputy surveyor of the district except for the owner of such settlement and improvement. And having perfected such surveys, shall enter the same in a book to be kept by him, and to be called the survey book, which shall remain in his office, liable to be inspected by any person whatsoever, upon payment of eleven pence for every search; and he shall cause copies of any such survey to be made out, and delivered to any person, upon the payment of one quarter of a dollar for each copy.

Sect. 6. Every survey made by a deputy out of his proper district shall be void, and of none effect. The Surveyor General and his deputies, are enjoined to survey or cause to be surveyed, the full amount of land contained and mentioned in any warrant, in one entire tract, if the same can be found, in such manner and form, as that such tract shall not contain in front on any navigable river or lake, more than one half of the length, or depth of such tract, and to conform the lines of every survey in such manner, as to form the figure or plot thereof, as nearly as circumstances will admit, to an oblong, whose length shall not be greater than twice the breadth thereof—Ten per cent. surplus to be allowed, and paid for *pro rata*, on patenting.

Sect. 7. Every February, the deputy is to return into the office of the Surveyor General, plots of every survey he shall have made in pursuance of any warrant, connected together in one general draught, so far as they may be contiguous to each other, with the courses and distances of each line, the quantity of land contained in each sur-

vey, and the name of the person for whom the same was surveyed.

Sect. 8. "The deputy-surveyor of the proper district shall, upon the application of any person who has made an actual settlement and improvement on lands lying north and west of the rivers *Ohio* and *Allegheny*, and *Conewango* creek, and upon such person paying the legal fees, survey and mark out the lines of the tract of land to which such person may, by conforming to the provisions of this act, become intitled by virtue of such settlement and improvement; *provided*, that he shall not survey more than four hundred acres for such person, and shall, in making such survey, conform himself to all the other regulations by this act prescribed."

Sect. 9. "No warrant or survey, to be issued or made in pursuance of this act, for lands lying north and west of the rivers *Ohio* and *Allegheny* and *Conewango* creek, shall vest any title in or to the lands therein mentioned, unless the grantee has, prior to the date of such warrant, made, or caused to be made, or shall within the space of two years next after the date of the same, make, or cause to be made, an actual settlement thereon, by clearing, fencing and cultivating at least two acres for every hundred acres contained in one survey, erecting thereon a messuage for the habitation of man, and residing, or causing a family to reside thereon, for the space of five years next following his first settling of the same, if he, or she, shall so long live; and that in default of such actual settlement and residence, it shall and may be lawful to and for this commonwealth to issue new warrants to other actual settlers for the said lands, or any part thereof, reciting the original warrants, and that actual settlements and residence have not been made in pursuance thereof, and so as often as defaults shall be made, for the time, and in the manner aforesaid, which new grants shall be under and subject to all and every the regulations contained in this act. *Provided* ALWAYS NEVERTHELESS, that if any such actual settler, or any grantee in any such original or succeeding warrant shall, by force of arms of the enemies of the United States, be prevented from making such actual settlement, or be driven therefrom, and shall persist in his endeavours to make such actual settlement as aforesaid, then, in either case, he and his heirs shall be entitled to have and to hold the said lands, in the same manner, as if the actual settlement had been made and continued.

Sect. 10. The lands actually settled and improved according to the provi-

sions of this act, to whosoever possession they may descend or come, shall be and remain liable or chargeable for the payment of the consideration or purchase money, at the rate aforesaid, for every hundred acres, and the interest thereon accruing from the dates of such improvements; and if such actual settler, not being hindered as aforesaid, by death, or the enemies of the United States shall neglect to apply for a warrant for the space of ten years after the time of passing this act, it shall and may be lawful for this commonwealth to grant the same lands, or any part thereof, to others, by warrants, reciting such defaults; and the grantees, complying with the regulations of this act, shall have, hold and enjoy the same, to them, their heirs and assigns; but no warrant shall be issued in pursuance of this act, until the purchase money shall be paid to the Receiver-General of the Land-Office.

SECT. 11. When any caveat is determined by the Board of Property, in manner heretofore used in this commonwealth, the patent shall nevertheless be stayed for the term of six months within which time the party against whom the determination of the board is, may enter his suit at common law, but not afterwards; and the party in whose favour the determination of the Board is, shall be deemed and taken to be in possession, to all the intents and purposes of trying the title, although the other party shall be in actual possession, which supposed possession, shall, nevertheless, have no effect upon the title; at the end of which term of six months aforesaid, if no suit is entered, a patent shall issue according to the determination of the Board, upon the applicant producing a certificate of the prothonotary of the proper county, that no suit is commenced, or if a suit is entered, a patent shall, at the determination of such suit, issue in common form to that party in whom the title is found by law; and in both cases, the patent shall be and remain a full and perfect title to the lands against all parties and privies to the said caveat or suit; with the usual saving to infants, &c.

SECT. 15. The holders of unsatisfied warrants heretofore issued agreeably to the 7th section of the act of 21st of December, 1784, may locate them in any district of vacant and unappropriated land within this commonwealth; provided the owners thereof shall be under the same regulations and restrictions, as other owners of warrants taken for lands lying north and west of Allegheny river and Conewago creek

are made subject by this act, the said recited act, or any other acts to the contrary notwithstanding. 1784.

Much controversy has arisen out of this act. Its evident object was to encourage the population and improvement of the country. An important section has received various construction. The consequences of unsettled titles are always certain. The population and improvement of the country have been impeded and retarded. Nineteen years have elapsed; but the dispute is still undecided, and whilst to the north, and to the west of these controverted lands, the country increases with industrious citizens, and smiles with cultivation; here the half-finished cabin and remaining forests, proclaim that the land is without a certain owner.

It is important in the consideration of this controversy, that at the time of passing this act, there existed a war between the United States, and the Indian nations, in the western country. The armies of the United States had experienced signal defeats from the savages. In 1791, general *Harmar* was defeated. On the 4th of November in the same year, general *St. Clair* was defeated with great slaughter. It was considered unsafe to attempt an immediate settlement, beyond the Allegheny in a country exposed to the inroads of a subtle and vindictive enemy, whose mode of warfare was peculiar; and whose approach was often in secret, and could not be guarded by common precaution.

On the 20th of August, 1794, general Wayne defeated the Indians at the *Miamis*; his treaty with them, was on the 3d of August, 1795, when hostilities ceased, and the treaty was ratified by the senate of the United States, on the 3d of December, 1795.

In the *Lessee of Grant v. Eddy*, before cited, both parties claimed under warrants issued by virtue of the act of 3d of April, 1792.

It appeared in evidence that the defendant had paid into the Receiver-General's office £.420 on the 17th of November, 1792—£.620 on the 10th of January, 1793—and £.2170 on the 12th of August, 1793, besides the usual office fees. But the proof on the part of the plaintiff was extremely defective in this particular. The certificate of the Receiver General charged the "Lands Dr. to Cash," and there was only one entry of cash credited, as applicable to the subjects in dispute, viz. £.94 10s. 6d. on the 26th of January, 1793.

The lands lying east of the Allegheny river, were not subject to settlement conditions. A caveat had been filed on

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the part of the plaintiff on the 26th of February, 1793, and a decision of the Board of Property was had on the 28th of March, 1794, that the deputy surveyor should execute the defendant's warrants, the same having the priority in point of time, and well describing the lands. The present ejectment was commenced within six months thereafter.

By the Court. The warrants lately granted by the Land-Office, bear equal date with the applications of the different parties. But the periods when they have actually issued, can only be ascertained from the payment of the purchase money. In this mode the time of issuing the defendant's warrants may be ascertained; but from the deficiency of the proof adduced by the plaintiff, it cannot be pronounced with certainty, when his warrants issued.

We know, however, that the applications of the defendant are earlier than those of the plaintiff, and that the former must succeed, provided the lands are described with convenient certainty, and the party has not incurred a forfeiture of his pretensions, by gross laches or delay.

Priority of application gives a certain degree of equity.—The deputy surveyors, by the 5th section of the act of 3d of April, 1792, are directed to survey according to the priority of the warrants. But all applications must be pursued within a reasonable time by payment of the purchase money, and taking out warrants, and procuring surveys to be made. It would, under a different construction, lay in the power of the earliest applier, to ingross and monopolize the whole country, by a long list of applications, contiguous to each other; beginning at a certain fixed point, without paying a single shilling into the coffers of the state, until it suited his convenience! This never could have been the intention of the legislature.

What that reasonable time is, appears unnecessary to be determined, in the present suit; because it cannot come in question, unless it clearly appears that the lessor of the plaintiff has paid his money into the treasury sooner than the adverse party, and that the latter has been guilty of manifest negligence. Verdict for the defendant.

Lessee of Lewis Bond v. Robert Fitzrandolph.

Ejectment for one messuage, and 400 acres of land on French creek.

This was a contest between two settlers, without warrants, to lands west of the river Allegheny, and on the east side of French creek.

In 1789, one *Cornelius Vanhorne* erected a cabin of heavy logs on the land. The lessor of the plaintiff in 1792, was an officer of the army under general *Wayne*, and was stationed by him, with a detachment of 28 men, at *Cussewago*, to protect the inhabitants from the Indians. During the winter he pulled down *Vanhorne's* cabin, and made rails of the logs. He erected a new cabin, fifty or sixty perches from the former, with the assistance of two soldiers, whom he hired for that purpose, and also cleared and fenced a field of ten acres, which had formerly been cultivated by the natives. In the spring of 1793, he planted one half of an acre of corn, and one half of an acre of potatoes; and was recalled the same spring, having first placed one *Licquers*, who had intermarried with an Indian woman, in his cabin, and contracted with a trader to supply him with meat and flour.

After *Bond* was withdrawn, the defendant in behalf of *Vanhorne*, forced *Licquers* from the possession of the tract, and in August, 1793, cut and made hay thereon. He then fled, on hearing that no treaty had been concluded with the Indians. In the course of the following month he returned with his horses, broke up the field which had been fenced by *Bond*, (the rails whereof had been burnt,) put the fence in order, and sowed turnips. On the 8th of May, 1794, he obtained a survey by *William Power*, a deputy-surveyor, of 401 as. and 29 ps. in pursuance of his improvement, dated 1st of March, 1791. He lived on the lands, extending his improvements, erected three other houses, cleared and fenced 20 acres more of ground, and had the whole in good cultivation. Neither *Bond*, nor *Licquers* had been in that country since 1794. They obtained no survey, nor did it appear that they had attempted to procure one.

On opening the plaintiff's title, it was objected, that he should have filed his caveat under the 11th section of the act of 3d of April, 1792, and have first tried his claim before the Board of Property.

By the Court. The two clauses of the act refer to different objects. Though the words of the 11th section are general, they have been held not to extend to lands claimed under rights or contracts previous to the passing of this law. The law does not require *in terminis*, that a caveat shall be filed to try a title to lands. There are no words restrictive of the jurisdiction of the ordinary courts of justice in the first in-

stance; and we will not, by construction, increase the powers of the Board of Property. The parol evidence, therefore, must be received.—But what operation the bare improvement will have, where the plaintiff must recover, on shewing a title, is another question.

After the testimony, and arguments were closed, the court delivered the following charge, in substance.—This is a case of the first impression under the act of 3d of April, 1792. That law has introduced a new species of title; but whether it will effectuate the intentions of the legislature, time only can determine. In the mean while, it behoves us to move with caution, and to reflect fully before we form an opinion. No warrant exists on either side. Both parties claim as actual settlers and improvers under the 8th and 9th sections of the act. The plaintiff who must recover by his own strength, must bring himself clearly within the law. “On his conforming to the provisions of the act,” depends the validity of his right. An application to the deputy-surveyor of the district, and payment of the legal fees, form a part of that conformity. The plaintiff has given no survey in evidence, nor can we collect from presumption, that he has attempted to make one. His pretensions, therefore, are not designated, or defined. His house, and part of his original inclosure, are excluded by the defendant’s survey. He cannot claim under agreed lines made by the predecessors of the defendant and others, while he sets up a title adverse to the former. How then shall his improvement be extended, or in what direction shall it go? Confining ourselves to the case now before us, we are of opinion, that the plaintiff having shewn no survey, nor even an attempt to make one, his claim is not recognized by the law, so as to entitle him to recover.

If the deputy surveyor had refused to do him justice, he might have complained thereof to the Surveyor-General or the Board of Property: and he would then have evinced an endeavour, on his part, to conform to the law. But no pretext of that kind exists in the present case. Verdict for defendant.

Allegheny, May, 1797, before Yates and Smith, justices. (MSS. Reports.)

That a recovery cannot be had on a mere settlement without a survey, was also held in the Lessee of *Benoni Dawson v. William Laughlin, Allegheny, May, 1799, before the same judges. (MSS. Reports.)*

In *Hubley’s lessee v. Chew*, before cited, a caveat had been entered by the

plaintiff against the defendant, on the 11th of April, 1793. The Board of Property decided in favour of the defendant; but stayed issuing the patent for six months. The ejectment was not brought within the six months; but it was brought to April term, 1794, in the common pleas of Northumberland county, before any patent actually issued.

The defendant offered in evidence a patent dated 22d of March, 1796, to him, and insisted that the same was a full and perfect title to the lands against the plaintiff in the present suit, being grounded on the decision of the Board of Property, and no action had been entered at common law, by the plaintiff within six months after the determination.

On the ground that the patent was dated subsequent to the suit brought, the court were clearly of opinion it could not be evidence: But how far the words and intention of the legislature, in the law relied on, may effect an exception in the general practice, was the great question.

By the Court. We cheerfully disclaim all legislative power; but it will not be denied, that we possess the right of putting such construction on the acts of the legislature, as appears to us, best to accord with their intention, either express, or implied. We cannot construe a law differently from the plain, clear words of it, under any ideas of convenience or equity. Arguments *ab inconvenienti*, only apply where the law is dubious. It is sufficient for us to declare our opinion on the present question, that the 11th section of the act of 3d of April, 1792, does not extend to the case before us. We do not much regard the title of the law, it is said to be no part of a statute. But the preamble has considerable weight in discovering its meaning. Though it will not control the clear and positive words of the enacting part, it may explain them if ambiguous. The declared object of the whole act goes to the *unsold* and *unsettled* lands within the Indian purchase at fort Stanwix in 1763, and the preceding purchases; and to the *vacant* lands included in the Indian purchase of 1784, at fort *M’Intosh*.

All the provisions of the law go merely as to *unappropriated* lands; except that in the last section, it is directed, that unsatisfied warrants issued under a former law, may be located on *vacant* and *unappropriated* lands.

To comply, therefore, with the whole scope of the act, and declared intention of the legislature, the generality of the expressions in the beginning of the 11th

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section, "When *any* caveat is determined, &c." must necessarily be restrained to any caveat relating to lands then vacant and unappropriated. The clause in question cannot be extended, in our apprehension to caveats respecting other lands, held under rights or contracts, antecedent to the passing of this law.

The words of the section now under consideration, are not more large and comprehensive, than those used by the legislature in the 15th section of the act of 8th of April, 1785. "That in making *any* survey by *any* deputy-surveyor, he shall not go out of his proper district, &c." Nevertheless, in the case of the Lessee of *Alexander Wright v. Benjamin Wells*, at Washington, May, 1793, *McKean*, C. J. and *Yeates*, after full argument, ruled that the expressions related solely to the lands purchased at *Fort McIntosh*. (MSS. Reports.)

And in *Abright* and others, v. *McGinnis's* lessee. In the supreme court, December, 1799, it was solemnly adjudged by the whole court, "That the 11th section of the act of 3d of April, 1792, does not apply to cases of lands improved at the time of passing that law. (MSS. Reports.)

This decision is recognized, at Lancaster, June 2d, 1810, in *Steinmetz v. Young*, 2 Binney, 523. So that the construction is settled.

To give efficacy to an improvement against a written title, under the law of 3d of April, 1792. The improvement must appear clearly to subsist *as such* before the commencement of the written title.

Thus, in the Lessee of *James Hepburn v. William Hutchinson*, Northumberland, October, 1798, before *Yeates* and *Smith*, Justices, (MSS. Reports,) in ejectment for 202 acres of land, on Delaware run, in Turbutt township. The case was;

The plaintiff claimed under an application dated 20th of March, 1792, founded on a certificate of two justices of the peace, that the lands were unimproved; a consequent warrant of the 11th of April following, and a survey of 202 acres on the 28th of the same month, and patent dated 14th of May, 1792.

The defendant rested on a supposed prior improvement. He began to cut logs on the ground on the 9th of April, 1792, two days anterior to the date of the plaintiff's warrant.

The court were clearly of opinion, that this case was not within the provision contained in the 5th section of the act of 3d of April, 1792, "That deputy-surveyors shall not by virtue of any warrant, survey any tract of land that may have been actually settled and improved, prior to the date of entry of

such warrant with such deputy, except for the owner of such settlement and improvement." A settlement is defined by the third section of the act of December, 1786. To make an improvement efficacious, it must subsist clearly as such before the commencement of an adverse written title. If the defendant's doctrine should be sustained, there could be no possible security for any paper title, where the lands contemplated to be surveyed, lie at a distance from the seat of government. Verdict for plaintiff.

The service of a declaration in ejectment, within the six months, although the suit was not entered on the docket, until six days after the expiration of the six months, was held to be sufficient to save the limitation of the 11th section of the act of 3d of April, 1792. *Nicholson's* lessee, v. *Wallis*, 4 Dallas, 154.

Lessee of *Samuel Ewalt v. Martha Highlands*.

The plaintiff claimed 400 acres of land, across the Allegheny, at Girty's run, under a settlement and survey.

It appeared in evidence, that the lessor of the plaintiff, with two hands, on the 30th of April, 1792, crossed the Allegheny to make an improvement. They deadened about an acre of timber; returned, and in about two weeks more, deadened some little more. He erected a cabin with a clap-board roof, 8 feet to the square, and cut out logs for a door, and planted a few peach stones, apple seeds and potatoes, but made no other improvements, nor ever resided himself, nor had tenants on the land.

A survey made by *Jonathan Leet* under the settlement, on the 9th of April, 1794, was offered in evidence, but excepted to, as not being sufficient authority to make a survey, under the act of 3d of April, 1792.

By the Court. Though the validity of the survey depends "On the actual settlement and improvement" of lands lying north and west of the rivers Ohio and Allegheny and Conewango creek, yet the deputy-surveyor must necessarily judge thereof in the first instance, a court and jury must afterwards judge of the settlement, and his consequent authority. His act is not conclusive evidence hereof. Let the survey be read.

On the 10th of February, 1796, *Ewalt* leased to one *Peter Smith*, who came over the river, kindled a fire in the cabin, staid there an hour, and then removed. His landlord lived on the east side of the river with his family. The defendant and her family resided on the lands in question above three years.

A motion was made for a nonsuit.

By the Court. What a deputy-surveyor of a district does, must be always un-

der the control of the court and jury, who are competent to determine on the validity of his acts. The second section of the law offers these lands for sale to persons "Who will cultivate, improve and settle them, or cause the same to be cultivated, improved and settled;" but the legislature have not ascertained in the 8th section, how far "An actual settlement and improvement" must have progressed to warrant a survey, as they have laid down no general rule or criterion on the subject, neither will this court attempt it; yet we are bound to say, that a *personal residence* must in the nature of things accompany an actual settlement, unless impending, imminent danger exists, which would prevent a man of reasonable firmness of mind from continuing on the land.

The *animus residendi* must be fully evinced. Negatively, we may safely say, that what has been mentioned at the bar, deadening one or two acres of timber, planting a few peach stones, apple seeds, potatoes, or grains of corn, or the doing of other such acts, though a small cabin is also put up, will not, *merely of themselves*, constitute a settlement, where the party actually lives at a distance, and has no tenant occupying the ground. Neither will a man's setting his *foot* or *heart* on a tract of land, and claiming it as his own, give such a preference as the law contemplates. Fancied rules of honour cannot determine the question. A settlement must depend on the peculiar circumstances of every case, which may be greatly varied. We cannot, however, pronounce, that the plaintiff's proofs came up to our idea of an actual settlement which would authorize a survey. The plaintiff took a nonsuit immediately. *Allegheny*, May, 1799. (MSS. Reports.) S. C. 4 Dallas, 161.

The Lessee of *Neal McLaughlin v. Nicholas Dawson*, is reported in 4 Dallas, 221. But not sufficiently full to give an extended view of the principles adopted and established under this act.

Both parties claimed the land by virtue of actual settlement. The plaintiff, on the 4th of April, 1792, crossed the Ohio, grubbed a small piece of ground near to a cabin which had been erected and covered in by one *Link*, in 1790; cleared a spot about 40 feet square, made 10 or 15 rails, which he put up, and planted a few seeds of corn. On the 11th of the same month, he is found living and sleeping in the cabin, and in the two following months, occupied in digging his small patch, planting potatoes, and sowing garden seeds. He made a chimney; and though notified of danger from the Indians, staid one night longer. In August he made a door to

the cabin. In October he carried out with him provisions, &c. and a straw mat to sleep upon; a mattock and an axe, and occupied himself in making rails. Only he and *Charles Phillips*, were known to have resided on the northwest side of the Ohio, with the intention of making settlements, in the year 1792. In 1793, he made several hundred rails, continued to grub, made a small piece of meadow, and lived in the cabin, with his bedding and small household utensils about him. On the 16th of May, 1793, he obtained a warrant, descriptive of the lands, and procured a survey of 400 acres and 68 perches, on the 11th of December following, and paid the surveying fees. In 1794, he burnt the logs and cleared the ground, and with his oxen, put in 4 or 5 acres of Indian corn, attended it during the season, and raised a crop of near 60 bushels. In 1795, he lived in his cabin, and had his cattle on the land, he raised turnips, and hauled them home. In 1796, he continued his settlement, and added an acre to his former field: and in 1797, he cleared 8 or 10 acres of land more, and constantly lived on the ground, except when the immediate approach of danger from the savages induced him to remove occasionally therefrom.

The first commencement of the defendant's improvement, was one day earlier than the opposing claim. On the 3d of April, 1792, he crossed the river, in company with two others, in search of lands. On that day he planted 10 or 15 hills of Indian corn, deadened 7 or 8 trees, and marked the initial letters of his name, with gun powder, on *Link's* cabin. In the two following months he planted four hundred hills more of Indian corn, and hoed them occasionally. In September he grubbed two acres, rolled the logs, burnt them and the brush, and cleared the ground. In October he took out a plough and horses, ploughed the ground he had cleared, sowed two bushels of rye, and built a good block house, about 12 feet square, but did not cover it in. During this year he lived with his brother *Benoni Dawson*, at the mouth of Mill creek, about four miles distance from the lands in dispute. In February and March, 1793, he made clap-boards, covered his block-house, made a door, and slept one or two nights therein. He cleared four acres more land, and mowed rails for six acres. In the following month he inclosed a field of 7 acres with a fence, planted it with Indian corn, and afterwards attended it from time to time. He and one *George Clark* were seen together in the block-house; and one *Daniel Swearingen* demanded of the district surveyor's assis-

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tant, to make a survey in consequence of the defendant's settlement, which was refused on the ground of the plaintiff's earlier application for a survey to him. In due season he pulled his corn, and lodged it in the loft of his block-house. During 1793, defendant was engaged as a six month's man, at *Philips's* station. In 1791, he was seen ploughing, and he disposed of his former crop of corn. He put in more corn which was seen growing during this year; and he was also engaged during this year, as a volunteer on the frontiers. In 1795, he put in 2 1-2 acres of Indian corn. He cropped with his brother *Thomas* at the distance of 5 miles from these lands, and lived with his father occasionally. In February, 1796, he married, and removed with his wife into the block-house, where they have resided since. He had 8 or 10 acres cleared, and under good fence; and in 1797, he grubbed and cleared 3 acres additional, near the block-house.

In 1792, the parties, respectively, warned each other against continuing their improvements. The plaintiff's warrant was not entered in the office of the deputy-surveyor of the district, until the 23d of August, 1793.

By the Court. The question is, which of these claims ought to prevail, and is naturally subdivided into two points.

1st. Whether the pretensions of the plaintiff as an *actual settler*, are preferable in law to the defendant's previous to the 23d of August, 1793, when his warrant was entered with the deputy-surveyor? 2d. Whether since that period he is not vested with additional equity?

The act of assembly of 3d of April, 1792, certainly had in view the population of the back country, and the forming a barrier on the frontier lands, north and west of the rivers Ohio and Allegheny and Conewango creek, by placing numerous families thereon. Whether the titles are derived originally from labour bestowed on the ground, or disbursement of cash, no warrant, or survey shall, by the 9th section, vest any title to such lands, "Unless the grantee has made, or shall within two years thereafter, make, or cause to be made, an actual settlement thereon, by clearing, fencing and cultivating at least two acres for every hundred acres contained in one survey, erecting thereon a messuage for the habitation of man, and residing, or causing a family to reside thereon, for the space of five years next following his settling the same, &c."

Link's cabin being erected before the passing the law, empowering the sale of these lands, gives no equity either to him, or plaintiff; nor can the planting of a dozen hills of corn, deadening 7 or

8 trees, or marking the defendant's name on the cabin, confer any right.

The improvements and cultivation of the plaintiff, will be found, on an accurate review of the evidence, to be inferior in extent to those of the defendant, in each distinct year, except 1797. The one depended on his own exertions, and was poor; the other could call to his assistance the services of his friends and connections, and commanded money. But the former possessed one strong, prominent feature of an actual settler, a constant, personal residence on the ground, unless when intimidated by the impending danger of a savage foe, encompassed by his small stock of provisions and bedding, and his few family utensils, and implements of husbandry; while the latter was engaged as a volunteer in the public service, or lived with his father or brothers. In correct language, it is physically impossible, that a man should have two homes at the same time. It may as well be said, that a body may be in different places at the same instant, acts are the most unequivocal proofs of the bent of the mind. Here *McGlaughlin's* intention to reside on the lands in dispute, is completely demonstrated by personal residence, and a permanent adherence to the soil. The intent is executed in fact.

In *Evault's* lessee, v. *Highlands*, we delivered our explicit opinion, on due consideration, that "A personal residence must, in the nature of things, accompany an actual settlement, unless impending imminent danger exists, which would prevent a man of reasonable firmness of mind from continuing on the land;" and we are now more firmly impressed with the correctness of these sentiments. But it has been asserted at the bar, that this construction would throw actual settlers in a worse situation than warrant holders, under the proviso contained in the close of the 9th section of the act of 3d of April, 1792. This we deny. That proviso only respects the progress of the improvement, in clearing 2 acres for every 100 acres in each survey, erecting a messuage thereon, and residing thereon for five years. It does not relate to the commencement, or origin of the title. In the reason of the thing, the rights of actual settlers must depend on the priority of their settlements; and a settlement necessarily involves in itself a personal residence of the party on the ground. And such is the legal idea of an improvement, as depending on the act of 30th of December, 1786.

The light in which we have viewed the first point, renders it unnecessary to go into the second in the present case. The

court conceiving that the plaintiff is the first actual *resident* settler on the lands in question, according to the true meaning of the legislature, and intitled in that character to recover the possession of the lands, will only add, that to his former right he has added the legal right of a warrant. Verdict for the plaintiff. *Allegheny*, October, 1800. (MSS. Reports.)

The Lessee of *James Scott v. William Anderson*, was settled on the same principles, the same day.

The case of the Lessee of *Robert Morris v. William Neighman, Allegheny*, Mar., 1799, before *Yeates* and *Smith*, Justices, is briefly stated in 4 Dallas, 209. But as this controversy greatly agitates the country, and has hitherto much engrossed the attention of the legislature, it is deemed of importance to give the different decisions pretty much in detail; a full statement of facts is also necessary to a competent understanding of each particular case. *Same plaintiff v. Adam Sheiner*. (MSS. Reports.)

The plaintiff claimed the lands in question, on the waters of *Big Conequawing creek*, under two warrants dated 4th of March 1793, and surveys made thereon, 12th and 19th of November, 1794.

It appeared, that when these surveys were made, with many others, for the plaintiff, there had been erected on *all* the tracts, seven small cabins by persons who intended thereby to hold the lands; and the agent of the plaintiff, to preclude dispute, had bought from the different claimants for 110 dollars. On the 25th of July, 1796, the agent took out a mill wright, to build a mill on the lands then occupied by *Neighman*, and demanded the possession thereof. The latter permitted him to level the water, but would not suffer him to do other work, as he insisted the plaintiff's warrants were *dead*, for defect of settlements within the two years. At this time *Neighman* had a small cabin, and about one acre of timber deadened, but had no family on the ground. On the 1st of March, 1797, the defendant settled with his family on the land, and before the bringing of the ejectment, had built a large cabin, 16 feet by 18, and a barn, cleared 10 acres of land, and had begun to make the dam and forebay of his mill, which he afterwards completed.

Sheiner, the other defendant, came with his family on the other tract of land, on the 8th of April, 1797, under *Neighman*, who was bound to make him a good title to one moiety thereof. Just as he was beginning to work, one *Jacob Rudolph*, a tenant who had accepted a lease under *Morris*, warned him off, but

he refused going, and would not permit *Rudolph* to take possession.

It further appeared, that in 1793, and 1794, no settlements were made across the *Ohio* and *Allegheny*. Early in March, 1795, a few individuals removed without their families, to the vicinity of *Fort Franklin*, *Cussewago*, and *Craig's Station*, but none settled at a distance, or detached from the garrisons. Some of the white people, in the spring of 1795, fired on the Indians; this incited them to make reprisals, and they accordingly, in the same spring, killed two persons near *Cussewago*, on French creek. It was totally unsafe to remove families into the interior of the country until 1796, when settlements in general took place.

Two questions were made. 1st. Whether the plaintiff forfeited his right under the warrants, by not making his settlements on the lands within the two years? 2d. Whether, if a forfeiture was incurred, the defendants might not enter, and, the condition being broken, take advantage thereof?

By the Court. These causes are said to involve extensive interests, and the magnitude of the case demands peculiar attention. The solution of the questions which have been agitated, depends more immediately on the 9th section of the act of 3d of April, 1792.

The act appears to be the result of a spirit of compromise between the advocates of actual settlements, and warrant rights. The only distinction between them is made in the 5th section, which declares that "Lands actually settled and improved *prior* to the date of the entry of a warrant with the deputy-surveyor of a district, shall not by virtue of such warrant be surveyed except for the owner of such settlement or improvement." This is confessedly a great preference; for if the particular lands were actually vacant and unimproved, when the warrant issued, a subsequent settlement and improvement made the day before its entry with the deputy-surveyor, shall postpone the warrant right.

The 9th section prescribes the terms on which warrants and surveys shall *vest a title* to lands lying north and west of the rivers *Ohio* and *Allegheny* and *Conequawing creek*. "The grantee shall within two years, &c. But it is provided in a subsequent clause, that "If any such actual settler, or grantee in any warrant, shall by force of arms of the enemies of the United States, be prevented from making such actual settlement, or be driven therefrom, and shall *persist* in his endeavours to make such actual settlement as aforesaid, then, in either case, he and his heirs shall be entitled to have and hold the said lands, in the same

1784. manner, as if the actual settlement had been made and continued."

It is a matter of public notoriety, that a war subsisted between the citizens of the United States, and the western Indians from 1790 to 1796. The expedition of General *Harman* into the Indian territories took place in 1790, which was succeeded by that of General *St. Clair*, who was defeated on the 4th of November, 1791. These are facts which cannot be forgotten by the people on the frontiers. The sum of £.4000 was appropriated for the defence of the western frontiers of this commonwealth, "In imminent danger of being invaded by the Indian tribes, then at war with the United States," by an act passed 17th of March, 1791. The same language is spoken in the preamble of another act passed 20th of January, 1792; and the governor was thereby empowered to engage three companies of rifle men to protect and defend the western frontiers, and £.4,500 were appropriated for that purpose. The same provisions were made by another act passed 3d of April, 1793, and 14,000 dollars allowed. These infantry companies were to be raised and stationed for the protection of the frontiers of *Westmoreland, Washington and Allegheny*, by a law of 28th of February, 1794, and 130 men were to be raised by another law passed 23d of September, 1794. These different public acts comport with the oral testimony given in the course of the trials. Until 1796, it was unsafe for families to cross the river, into the newly granted lands. In 1795, some few bold, adventurous persons settled in the spring near the garrisons; yet no families removed thither with women and children. Indictments for robbery uniformly charge that the party robbed was *put in fear*; and if the fact be attended with those circumstances of violence or terror, which in common experience are likely to induce a man to part with his property for the safety of his person; it will amount to a robbery; the law will presume fear, where there is a just ground for it. The same principle applies to the section of the law under consideration. For though the act certainly contemplated the settlement of the country within a period not remote, it provides for persons prevented from making such settlements "By force of arms of the enemies of the United States." It cannot reasonably be taken to be the will of the community, that these settlements should be made under imminent, impending danger, at a distance from the garrisons, or where there was just ground to fear such danger. The war continued *in fact* until the treaty was concluded at *Fort Greenville*, on the 3d of August,

1795, between General *Wayne* and the Indian tribes; and peace with them could not be said to be established, until that treaty was ratified by the president and senate of the United States, on the 22d of December, 1795. Here then is a safe rule to go by, freed from all danger of introducing perjury. The *terminus a quo* settlements shall commence, may safely be dated from the constitutional ratification of the *Greenville* treaty with the Indian nations, and if after that period, actual settlers or grantees "shall persist in their endeavours" to make their settlements, they shall not incur a forfeiture of their lands. This we take to be the true meaning, or spirit of the law.

But granting, for argument sake, that forfeitures were incurred by reason of non settlement for two years after the date of the warrants; who shall enter for the condition broken? The words of the law in the 9th section are freed from all doubt and difficulty on this head. "In default of such actual settlement and residence, it shall and may be lawful to and for the commonwealth to issue new warrants to other actual settlers for the said lands, or any part thereof, reciting the original warrants, and that actual settlements and residence have not been made in pursuance thereof, and so, as often as defaults shall be made, for the time, and in the manner aforesaid, which new grants shall be under and subject to all and every the regulations contained in this act."

The new warrants, issued under proper circumstances, operate as *inquests of office* to divest the former estates granted; and no individuals can take advantage of the breach of the condition, unless through the instrumentality of the state, by granting new warrants, in a specified form. This method of procedure is obviously pointed out by the legislature, to avoid the mischiefs necessarily attendant on private persons assuming upon themselves to determine, when the estates of the persons settling, or obtaining warrants, should cease and become void: and least of all ought those persons to have advantage of forfeitures, if they really took place, who by their own acts, and mere wills, prevented a compliance with the terms enjoined by the law, on the part of those who were desirous of settling and improving, and had fully paid for the lands. If the expressions of the law were not as particular as we find them, we should have no difficulty in pronouncing, that no persons should take advantage of their own wrong; and that it does lie in the mouths of men like the present defendants, to say "The warrants are *dead*, we will take and withhold the possession, and

thereby intitle ourselves to reap benefits from an unlawful act." We are bound to say, that on both the questions which have been made, the plaintiff is intitled to verdicts. The verdicts were, accordingly, for the plaintiff.

The point of forfeiture was also determined in the same manner in *Wilkins's lessee, v. Alenton, Allegheny*, November, 1801, before the same judges, (MSS. Reports.)

In the Lessee of *Hazard v. Lowrey*, in the supreme court. 1 Binney, 166. The case was:—The plaintiff's warrant bore date the 13th of April, 1792, and called for 400 acres "Adjoining land this day granted to *Walter Stewart*." On the 17th of June, 1794, more than two years after the date of the warrant, a survey was made upon it by the deputy-surveyor of the district, according to the description in the warrant, "Adjoining *Walter Stewart*;" but no entry was made at that time by plaintiff, or by any one under him, with a view to settlement. The defendant entered on the land in July, 1795, and plaintiff brought his ejectment to September, 1797, more than a year and a day after General *Wayne's* treaty, but less than two years.

Three points were reserved on the trial. 1st. Whether, as no survey was made upon the plaintiff's warrant, within two years next after the date, any survey thereon made afterwards, could vest a title in the warrantee. 2d. Whether any title vests in a warrantee under the act of 3d of April, 1792, unless he has made an actual settlement before the date of the warrant, or within two years next afterwards. 3d. Whether, supposing the plaintiff to have been prevented during the two years after the date of his warrant, from making an actual settlement, he had proceeded to make it within a *reasonable* time after the prevention ceased.

Tilghman, C. J. delivered the opinion of the court. The *first* and *second* points may be considered under one view. They as well as the third point, arise out of the act of the 3d of April, 1792, and principally out of the 9th section of that act.

Although this section is expressed with such obscurity as to have occasioned great diversity of opinion among men of the first abilities, yet there are some points concerning which there can be little doubt. One of these points is, that if the settlement required by law is prevented by force of arms of the enemies of the United States, the interest of the grantee does not revert to the commonwealth, although the settlement is not made within two years from the date of the warrant. Now, in the case before

us, the warrant bears date the 13th of April, 1792, and the Indians, and not deemed by the court, that for more than two years after the date, there was open war with the Indians, which rendered it dangerous to attempt a settlement of the land in dispute. It may be safely affirmed, from the public acts of the commonwealth in granting money and raising troops for the protection of the country, that this state of danger existed until the pacification by General *Wayne's* treaty with the Indians. If the danger arising from this war excused the warrantee from making a settlement, so did it likewise excuse the deputy-surveyor from surveying the land. The counsel for the defendant contends that in as much as the warrant does not describe the land, except as "Adjoining a tract granted to *Walter Stewart*," which had not been surveyed, the warrantee could not know where it lay, until it was surveyed, and of consequence he could not be prevented from settling what he had no right to enter on. But this argument has more of refinement than solidity. When the warrantee paid his money, and took out his warrant, his title commenced, he obtained a right to reduce the land to a certainty by survey, and he shall not be deprived of that right by the event of war. There is nothing in the act which authorizes such a position. On the contrary, the *proviso*, in the 9th section, which excuses the settlement, does virtually excuse the survey.

The *third* point for our decision supposes that the warrantee was prevented by the enemy from making a settlement for two years from the date of the warrant; but the defendant contends that a settlement was not made within a *reasonable* time after the prevention ceased. It was decided by my three brethren at a special court at *Sanbury*, that a *reasonable* time for such settlement should be allowed; and to that opinion I subscribe. The question then is, what is that *reasonable* time? The law has not fixed it. But as two years are allowed for building, clearing and fencing, in case the country had been in a state of peace; it seems most consonant to the spirit of the law, that where war existed from the date of the warrant for two succeeding years, not less than two years should be allowed from the pacification by the treaty by which the war was concluded. I understand this to have been the opinion of the judges of this court, and I see nothing which should induce us to depart from it. The defendant, then, having entered during the time the plaintiff had a right to hold the land, for the purpose of making a settlement, was a wrong-doer, and subject to be removed either by an

1784. entry or by ejectment. It follows that the plaintiff was entitled to judgment in the circuit court, and that judgment must now be affirmed.

This judgment fully confirms the doctrine of *Morris v. Neighman*, and the point is settled.

But another question of very great importance has arisen upon the *proviso* in the 9th section, which has divided the judges of the same court: and upon the construction of which, the judgments of different courts have been contrary. It is lamented by the editor, that the history of this interesting conflict, will swell this note to an *unwarrantable length*; but as the work is professedly designed, (not for the bar, to whom the whole subject is familiar, but) for the information of the citizens of the commonwealth, who have not access to the books and authorities, the detail is considered indispensable.

The question is, whether the conditions of *actual settlement*, by reason of the Indian hostilities for two years after the date of a warrant for lands across the Allegheny, are extinguished, or dispensed with, by the *proviso* in the 9th section of the act of the 3d of April, 1792?

Under the idea, that by the prevention of the enemies of the United States, the lands could not be settled within the two years, and that therefore the condition of settlement was extinguished; the Board of Property, in governor *Mifflin's* time, by the opinion of the then Attorney-General, had devised a form of certificate, which has been termed a *prevention certificate*, as follows: "We do hereby certify, that A. B. (the warrantee, or settler,) hath been *prevented* from making a settlement on a tract of land, containing 400 acres, situate, &c. conformable to the *proviso* contained in the 9th section of the act, entitled "An act for the sale of vacant lands within this commonwealth," passed the 3d day of April, 1792, by force of arms of the enemies of the *United States*; and that he, the said A. B. hath *persisted* in his endeavours to make such settlement."

Upon this certificate, signed by two justices, being produced at the Land-Office, a patent issued, notwithstanding the warrantee had neither improved, nor settled. The patent recited, that "A. B. has made it appear to the Board of Property, that he was, by force of arms of the enemies of the *United States*, prevented from making such settlement on the hereinafter described tract of land, as is required by the 9th section of an act of the general assembly of this commonwealth, passed the 3d day of April, 1792, entitled "An act for the sale of vacant lands within this commonwealth,"

within the time therein mentioned, and that he the said A. B. had *persisted* in his endeavours to make such settlement, there is granted by the said commonwealth unto the said A. B. a certain tract of land, &c.

But a change having taken place in the Land-Officers, a new construction was given to the proviso, attached to the 9th section of the act; it was insisted that no patent could issue, unless the terms of settlement and residence, were, at some period, completed, though the obligation to complete them, during the Indian war, was suspended, and the resolutions and proceedings of the former Board of Property, on the subject, were not deemed authoritative and conclusive upon the new board. At the same time a number of persons entered upon the lands of the warrantees, on the pretence that the forfeiture for non-settlement, was absolute, at the expiration of two years from the date of the warrants, and set up claims as actual settlers. When the company, known by the name of the *Holland land company*, who had received many patents under *prevention certificates*, applied, with similar certificates, for the rest of their patents, the secretary of the Land-Office refused to issue them. The company therefore, by their council, moved in the supreme court, for a rule on the secretary of the Land-Office, to shew cause, why a *mandamus* should not be awarded, commanding him to prepare and deliver patents to the company, for various tracts of land, &c.

The case was argued at March term, 1800, and is reported at great length, in 4 *Dallas*, 170, &c. under the name of "*The commonwealth v. Tench Cox, esquire.*"

The court differed in opinion, but the motion was overruled by the majority.

The opinion of Shippen, C. J. is as follows.

The legislature, by the act of the 3d of April, 1792, meant to sell the remaining lands of the state, particularly those lying on the north and west of the rivers *Ohio* and *Allegheny*. The consideration was to be paid on issuing the warrants. They had, likewise, another object, namely, that if possible, the land should be settled by improvers. The latter terms, however, were not to be exacted from the grantees at all events. The act passed at a time when hostilities existed on the part of the *Indian* tribes. It was uncertain when they would cease. The legislature, therefore, contemplated, that warrants might be taken out during the existence of these hostilities, which might continue so long, as to make it impossible for the warrantees to make the settlements required, for a length of time; not, perhaps, until after these hostilities should entirely cease. Yet,

they make no provision, that the settlements should be made within a reasonable time after the peace; but expressly within two years after the date of the warrants. As, however, they wished to sell the lands, and were to receive the consideration money immediately, it would have been unreasonable, and probably, have defeated their views in selling, to require settlements to be made on each tract of 400 acres, houses to be built and lands to be cleared; in case such acts should be rendered impossible by the continuance of the Indian war. They therefore make the *proviso*, which is the subject of the present dispute, in the following words; "provided always, &c."

When were such actual settlements to be made? The same section of the act which contains the above *proviso*, gives a direct and unequivocal answer to this question, "within the space of two years next after the date of the warrant." If the settlements were not made within that time, owing to the force, or reasonable dread, of the enemies of the *United States*, and it was evident that the parties had used their best endeavours to effect the settlement; then, by the express words of the law, the residence of the improvers for five years afterwards, was expressly dispensed with; and their title to the lands was complete, and patents might issue accordingly. It is contended, that the words "*persist in their endeavours*" in the *proviso*, should be extended to mean, that if within the two years, they should be prevented by the *Indian* hostilities from making the settlement; yet when they should no longer be prevented by those hostilities, as by a treaty of peace, it was incumbent on them, then to persist to make such settlement. The legislature might, if they had so pleased, have exacted those terms; (and they would not, perhaps, have been unreasonable) but they have not done so; they have expressly confined the time of making such settlements to the term of two years from the date of the warrant. Their meaning and intention can alone be sought for from the words they have used, in which, there seems to me, in this part of the act, to be no great ambiguity. If the contrary had been their meaning, they would not have made use of the word "*endeavours*," which supposes a possibility, at least, if not a probability, as things then stood, of those endeavours failing on account of the hostilities, and would, therefore, have expressly exacted actual settlements to be made, when the purchasers should no longer run any risk in making them.

The state having received the consideration money, and required a settlement within two years, if not prevented by enemies; and in that case dispensing with

the condition of settlement and residence, and declaring that the title shall be then good, and as effectual, as if the settlement had been made and continued; I cannot conceive they could mean to exact that settlement at any future indefinite time. And, although it is said, they meant that condition to be indispensable, and that it must be complied with in a reasonable time; we have not left to us that latitude of construction, as the legislature have expressly limited the time themselves.

It is urged that the main view of the legislature was to get the country settled and a barrier formed; this was undoubtedly one of their views, and for that purpose they have given extraordinary encouragement to individual settlers; but they had, likewise, evidently, another view, that of increasing the revenue of the state by the sale of the lands. The very title of the act, is "For the sale of the vacant lands within this commonwealth;" this latter object they have really effected, but not by the means of the voluntary settlers; it could alone be effected by the purses of rich men, or large companies of men, who would not have been prevailed upon to lay out such sums of money as they have done, if they had thought their purchases were clogged with such impracticable conditions.

I have hitherto argued upon the presumption, that the words, "*persist in their endeavours*," relate to the grantees, as well as the settlers; but, in considering the words of the *proviso*, it may be well doubted, whether they relate to any other grantee, or settler, than those who have been driven from their settlements. The word "*persist*" applies very properly to such. The words of the *proviso* are, "If such actual settlers, &c." Here, besides that the grammatical construction of referring the word "*persist*," to the last antecedent, is best answered; the sense of it is only applicable to settlements begun, and not to the condition of the grantees. There are two members of the sentence, one relates to the grantees, who it is supposed may be prevented from making their settlements; the other to the settlers, who are supposed to be driven away from the settlements. The latter words, as to them, are proper, as to the grantees, who never began a settlement, improper. The act says, in *either case*, that is, if the grantees are prevented from making their settlements, or if the settlers are driven away, and persist in their endeavours to complete their settlements, in either case they shall be entitled to the land.

I will not say this construction is entirely free from doubt; if it was, there would be an end of the question.

But taking it for granted, as it has

1784. been done at the bar, that the words relate to the grantees, as well as to the settlers: yet although inaccurate, with regard to the former, it seems to me, the legislature could only mean to exact from the grantees, their best endeavours to make the settlements, within the space of two years from the date of their warrants; at the end of which time, if they have been prevented from complying with the terms of the law, by the actual force of the enemy, as they had actually paid for the land, they are then entitled to their patents. If the legislature really meant differently, all I can say is, that they have very unfortunately expressed their meaning.

Feates, justice. I have long hoped and flattered myself, that the difficulties attendant on the present motion would have been brought before the justice and equity of the legislature for solution, and not come before the judicial authority, who are compelled to deliver the law as they find it written for decision. The question has often occurred to our minds, under the act of 3d of April, 1792, which has so frequently engaged our attention in our western circuits.

The *Holland* company have paid to the state, the consideration money of one thousand one hundred and sixty two warrants, and the surveying fees, on one thousand and forty eight tracts of land; besides making very considerable expenditures by their exertions, honourable to themselves, and useful to the community, (as has been correctly stated,) in order to effect settlements. Computing the sums advanced, the lost tracts, by prior improvements and interferences, and the quantity of one hundred acres granted to each individual for making an actual settlement on their lands; it is said, that averaging the whole, between two hundred and thirty, and two hundred and forty dollars, have been expended by the company, on each tract of land they now lay claim to.

The *Indian* war, which raged previous to, and at the time of the passing the law, and until the ratification of the treaty at *Fort Greenville*, must have thrown insurmountable bars in the way of those persons, who were desirous of sitting down immediately on lands, at any distance from the military posts. These obstacles must necessarily have continued for some time after the removal of impending danger, from imperious circumstances; the scattered state of the inhabitants, and the difficulty of early collecting supplies of provisions: besides, it is obvious, that settlements in most instances, could not be made, until the lands were designated, and appropriated by surveys, and more especially so,

where warrants have express relations to others, depending on a leading warrant, which particularly locates some known spot of ground.

On the head of merit, in the *Holland* land company's sparing no expere to procure settlements, I believe there are few dissenting voices beyond the mountains; and one would be induced to conclude, that a variety of united, equitable, circumstances, would not fail to produce a proper degree of influence on the public will of the community. But we are compelled by the duties of our office, to give a judicial opinion, upon the abstract legal question, whether if a warrant holder, under the act of the 3d of April, 1792, has begun to make his actual settlement, and is prevented from completing the same, "by force of arms of the enemies of the *United States*, or is driven therefrom," and shall make new endeavours to complete the same; but fails in the accomplishment thereof, the condition of actual settlement and residence is dispensed with, and extinguished?

I am constrained, after giving the subject every consideration in my power, to declare, that I hold the negative of the proposition, for the following reasons, collected from the body of the act itself.

1st. The motives inducing the legislature to enact the law, are distinctly marked in the preamble, that "The prices fixed by law for other lands," (than those included in the *Indian* purchase of 1768,) are found to be so high, as to discourage *actual settlers* from purchasing and *improving* the same.

2d. The lands lying north and west of the rivers *Ohio* and *Allegheny*, and *Conewango* creek, are offered for sale, to persons who will *cultivate, improve and settle* the same, or cause the same to be cultivated, improved and settled, at and for the price of *1. 7. 10s.* for every hundred acres thereof." By sect. 2, the price of lands is thus lowered, to encourage actual settlements.

3d. By sect. 3, "Upon the application of any person who may have settled and improved, or is desirous to settle and improve, a plantation within the limits aforesaid; there shall be granted to him a warrant not exceeding 400 acres, &c."

The application granted, is not to take up lands; but it must be accompanied, either by a previous settlement and improvement, or expressions of a desire to settle and improve a plantation; and in this form all such warrants have issued.

4th. By sect. 5, "Lands *actually settled and improved*, prior to the date of the entry of a warrant, with the deputy-surveyor of the district, shall not be

surveyed; except for the owner of such settlement and improvement."

This marked preference of actual settlers over warrant holders, who may have paid their money into the treasury for a particular tract; even, perhaps, before any improvement of the land was meditated, shows, in a striking manner, the intention of the legislature.

5th. By sect. 8 The deputy-surveyor of the district, shall, upon the application of any person, who has made an actual settlement and improvement on these lands, survey and mark out the lines of the tract of land, not exceeding 400 acres for such applicant."

The settlement and improvement alone, are made equivalent to a warrant, which may be taken out, by sect. 10, ten years after the time of passing this act.

6th. I found my opinion on what I take to be the true and legitimate construction of the 9th section; in the close of which is to be found the *proviso*, from whence spring all the doubts on the subject.

It has been said at the bar, that three different constructions have been put on this section.

1st. That if the warrant holder has been prevented by *Indian* hostilities, from making his settlement within two years, next after the date of his warrant, and until the 22d of December, 1795; (the time of ratification of general Wayne's treaty,) the condition of residence and settlement is extinct and gone.

2nd. That though such prevention did not wholly dispense with the condition, it hindered its running within that period; and that the grantee's persisting in his endeavours, to make an actual settlement and residence for five years, or within a reasonable time thereafter, shall be deemed a full compliance with the condition; and

3rd. That in all events, except the death of the party, the settlement and residence, shall precede the vesting of the complete and absolute estate.

Though such great disagreement has obtained, as to the true meaning of this 9th section, both sides agree in this, that it is worded very inaccurately, artificially and obscurely. Thus it will be found towards the beginning of the clause, that the words "*Actual settlement*," are used in an extensive sense, as inclusive of residence for five years; because its constituent parts are enumerated and described, to be by "*Clearing, fencing and cultivating* at least two acres for every hundred acres, contained in one survey; erecting thereon, a message for the habitation of man,

and residing, or causing a family to reside thereon, for the space of five years, next following the first settling of the same, if he or she shall so long live. "In the middle of the clause, the same words are used in a more limited sense, and are coupled with the expression "*and residence*," and in the close of the section, in the *proviso*, the same words, as I understand them, in a strict grammatical construction of the whole clause, must be taken in the same large and comprehensive sense, as they first conveyed; because the terms, "*Such actual settlement*," used in the middle of the section, are repeated in the *proviso*, and refer to the settlement described in the foregoing part; and the words, "*actual settlement as aforesaid*," evidently relate to the enumeration of the qualities of such settlement. Again, the confining of the settlement to be within the space of two years, next after the date of the warrant, seems a strange provision. A war with the *Indian* natives subsisted when the law passed, and its continuance was uncertain. The state of the country might prevent the making of surveys for several years; and until the lands were appropriated by surveys, the precise places where they lay, could not be ascertained generally.

Still, I apprehend that the intention of the legislature may be fairly collected from their own words. But I cannot accede to the first construction, said to have been made of the *proviso* in the 9th section; because it rejects, as wholly superfluous, and assigns no operation whatever, to the subsequent expressions, "If any grantee shall persist in his endeavours, &c." which is taking an unwarrantable liberty with the law. Nor can I subscribe to the second construction stated, because it appears to me to militate against the general spirit and words of the law, and distorts its great prominent features in the passages already cited, and for other reasons which I shall subjoin. I adhere to the third construction, and will now again consider the 9th section. It enacts, in the first instance, that, "No warrant, &c. Provided, &c.

"*Persist*" is the correlative of attempt or endeavour, and signifies "hold on," "persevere," &c. The beginning words of the section, restrict the settlement, "to be within two years next after the date of the warrant, by clearing, &c. and by residing for the space of five years, next following his first settling of the same, if he or she shall so long live;" and in default thereof, annexes a penalty of forfeiture, in a mode prescribed. But the *proviso* re-

1784. **l**ieves against this penalty, if the grantee is prevented from making such settlement by force, &c. and shall *persist* in his endeavours to make such actual settlement as aforesaid. The relief, then, as I read the words, goes merely as to the times of two years next after the date of the warrant, and five years next following the party's first settling of the same; and the *proviso* declares, that *persisting*, &c. shall be equivalent to a continuation of the settlement.

To be more intelligible, I paraphrase the 9th section, thus:—Every warrant holder shall cause a settlement to be made on his lands within two years next after the date of his warrant, and a residence thereon for five years next following the first settlement, on pain of forfeiture by a new warrant. Nevertheless, if he shall be interrupted, or obstructed, by external force, from doing these acts within the limited periods, and shall afterwards persevere in his efforts in a reasonable time, after the removal of such force, until those objects are accomplished, no advantage shall be taken of him, for the want of a successive continuation of his settlement.

The construction I have adopted, appears to me to restore perfect symmetry to the whole act, and to preserve its due proportions. It affords an easy answer to the ingenious question proposed by the counsel of the *Holland* company. If, say they, immediately after a warrant issues, a settler, without delay, goes on the ground the 11th of April, 1792, and stays there until the next day, when he is driven off by a savage enemy, after a gallant defence; and then fixes his residence as near the spot, as he can, consistently with his personal safety, does the warrantee lose all pretensions of equity? or, suppose he has the good fortune to continue there, firmly adhering to the soil, for two or three years, during the Indian hostilities; but is, at length, compelled to remove by a superior force; is all to go for nothing, and must he necessarily begin again? I answer to both queries in the negative; by no means. The *proviso* supplies the chasm of successive years of residence; for every day and week he resides on the soil, he is intitled to credit in his account with the commonwealth: but, upon a return of peace, when the state of the country will admit of it, after making all reasonable allowances, he must resume the occupation of the land, and complete his actual settlement. Although a charity cannot take place according to the letter, yet it ought to be perform-

ed *cy-pres*, and the substance pursued. 2 Vern. 255. 2 Fonbl. 221.

It has been objected, that such a contract with the state, is unreasonable and hard on the landholders, and ought not to be insisted upon. It will be said in reply, they knew the terms before they engaged in the bargain, and must abide by the consequences. The only question is, whether the interpretation of it be correct or not.

7th. A due conformity to the provisions of the act, is equally exacted of those who found their preference to lands on their personal labour, as of those who ground it on the payment of money. I know of no other distinctions between these two sets of land holders, as to actual settlement and residence; than that the claims of the former, must be limited to a single plantation, and the labour be exerted by them, or under their direction; while the latter may purchase as many warrants as they can, and make, or cause to be made, the settlements required by law. *Addison*, 340-341.

It is admitted, on all sides, that the terms of actual settlement and residence, are, in the first place, precedent conditions, to the vesting of absolute estates in these lands; and I cannot bring myself to believe, that they are dispensed with, by unsuccessful efforts, either in the case of warrant holders, or actual settlers. In the latter instance, our uniform decisions have been, that a firm adherence to the soil, unless controlled by imperious circumstances, was the great criterion, which marked the preference in such cases; and I have seen no reason to alter my opinion.

8th. Lastly, it is obvious from the preamble, and section 2, that the settlement of the country, as well as the sale of the lands, was meditated by this law; the latter, however, appears to be a secondary object with the legislature. The peopling of the country, by a hardy race of men, to the most extreme frontier, was certainly the most powerful barrier against a savage enemy.

Having been thus minute in delivering my opinion, it remains for me to say a few words, respecting these persons who have taken possession of part of these lands, supposing the warrants to be *dead*, according to the *cant word* of the day, and who, though not parties to the suit, are asserted to be implicated in our decision. If the lands are forfeited in the eye of the law, though they have been fully paid for, the breach of the condition can only be taken advantage of by the common-

wealth, in a method prescribed by law. Innumerable mischiefs, and endless confusion, would ensue, from individuals taking upon themselves to judge when warrants and surveys cease to have validity, and making entries on such lands at their will and pleasure. I will repeat what we told the jury in *Morris's lessee, v. Neighman and Sheiner*: "If the expressions of the law were not as particular as we find them, we should have no difficulty in pronouncing, that no person should take advantage of their own wrong, and that it does not lie in the mouths of men, like those we are speaking of, to say the warrants are *dead*; we will take and withhold the possession, and thereby entitle ourselves to reap benefits from an unlawful act." On the whole, I am of opinion, that the rule should be discharged.

Smith, J. I have had a full opportunity of considering the opinion delivered by my brother *Yeates*; and as I perfectly concur in all its principles, I shall confine myself to a simple declaration of assent.

Brackenridge, J. having been concerned for the *Holland* company, when at the bar, declined giving any opinion.

By the Court. Let the rule be discharged.

This decision, however, had no tendency to settle the controversy subsisting between the warrant holders and the settlers. Petitions were presented to the legislature by the settlers, requesting their interposition. These were encountered by memorials from the companies. But on the 2d of April, 1802, an act was passed, entitled "An act to settle the controversies arising from contending claims to land, within that part of the territory of this commonwealth, north and west of the rivers *Ohio* and *Allegheny*, and *Conewango* creek, (chap. 12277.)

The preamble recites at large the 9th section of the act of 3d of April, 1792, "That applications were making for new warrants, in cases, where in the opinion of the applicants, the original warrantees are barred from claiming title by their own default, in not complying with the conditions required in the said section, &c. with other recitals, which will appear in the case which follows.

The first section then directs the judges of the supreme court to meet together within three months from the 1st of April, and devise a form of action for trying and determining *certain proposed questions* relative to these disputed titles, and transmit the same to the governor, whose duty it was made,

with the assistance of the Attorney-General, to carry the same into effect without delay.

Sect. 2, prescribed the manner in which the said questions were to be decided. And, sect 3 directed that the judges should devise and direct, in what manner, and under what circumstances, parties should be admitted to the suit, and what notice should be given respecting the same, &c. and that they should certify the verdict and judgment to the governor, previous to the meeting of the next legislature.

Sect. 4. And in order to prevent the confusion that would arise from issuing different warrants for the same land, and to prevent law suits in future respecting grants from the Land-Office under the act of 3d of April, 1792, the secretary of the Land Office was prohibited from granting any new warrant for land which he had reason to believe had been already taken up under a former warrant, but in all such cases he shall cause a duplicate copy of the application to be made, on which he shall write his name, with the day and year in which it was presented, and file the original in his office, and deliver the copy to the party applying. *Provided*, that on every application so to be made and filed, shall be certified, on the oath or affirmation of one disinterested witness, that the person making such application, or in whose behalf it is made, is in actual possession of the land applied for, and such certificate shall mention also the time when such possession was taken; and the application so filed, shall be intitled to the same force and effect, and the same priority in granting warrants to actual settlers, as though the warrants had been granted at the time when the applications were filed; and should the decision of the court and jury, at the trial aforesaid, be in favour of the claims of the actual settlers, the secretary of the Land-Office shall proceed to grant the warrants, upon the purchase money being paid, according to the priority of the applications filed in his office.

The *proposed questions* stated in the act, are as follow:

1st. "Are warrants heretofore granted under the act of 3d of April, 1792, valid and effectual in law against this commonwealth, so as to bar this commonwealth from granting the same land to other applicants under the act aforesaid, in cases where the warrantees have not fully and fairly complied with the conditions of settlement, improvement and residence, required by the said act, at any time before the

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date of the said warrants respectively, or within two years after?"

2d. "Are the titles that have issued from the Land-Office, under the act aforesaid, whether by warrant or patent, good and effectual in law against this commonwealth, or any person claiming under the act aforesaid, in cases where such titles have issued on the authority, and have been grounded upon the certificates of two justices of the peace, usually called prevention certificates, without any other evidence being given of the nature and circumstances of such prevention, whereby, as is alleged, the conditions of settlement, improvement and residence, required by the said act, could not be complied with?"

The *Holland* company declined this special jurisdiction. In their reasons delivered to the judges, they said they could not approve of the terms of the preamble of the act, by which the legislature had undertaken to declare the meaning and construction of the original contract, (the very point in controversy;) nor could they admit the right or propriety of dictating a new, and perhaps, unconstitutional mode of settling a judicial question, without the assent of all the parties in interest.

The merits of the case, they say, evidently involve the following considerations; 1st. Whether the company have complied with the condition of the 9th section of the act of April, 1792? 2d. Whether the reasons assigned for a non compliance with the condition, bring their case within the *proviso*? 3d. Whether the *proviso* operates upon cases that are brought within its terms, to discharge the condition entirely, or only to enlarge the time for performing it? 4th. Whether the company have so persisted in their endeavours to perform the condition, as to be still within the benefit of the *proviso*? And, 5th. Whether the government, by prescribing the evidence, on which patents had actually issued, in cases brought within the *proviso*, could now take advantage of the forfeiture, for a supposed non compliance with the original condition?

But, in their opinion, the questions proposed by the legislature, excluded an investigation and decision, upon any other point than the following: 1st. Whether, if the *Holland* company have not performed the condition, on which the warrants originally issued, within two years, though the residence could not be completed till the expiration of five years, the state is barred from granting the same lands to other applicants? And 2d, whether patents having

issued on the evidence of prevention certificates alone, they are not void, so as to authorize the state to sell the same land to other purchasers?

On the first of these points, they observed, that it had never been contended, that the *Holland* company had performed the condition within two years; but only, that the condition was discharged, or suspended, by the operation of the *proviso*, on the facts of their case; particularly the fact, that an *Indian* war existed for several years, beyond the term of two years specified in the act of Assembly. And, on the second point, it was sufficient to say, that although the prevention certificate was the evidence prescribed by the public officers, and ought, therefore, to be binding on the government, yet that even waiving that objection, the patentees would be deprived of their land, when other satisfactory, and legal evidence, was, and is in their power, to prove the circumstances which entitled them to patents.

They therefore declined becoming a party to the proposed suit, because a decision on the two abstract questions, would still leave untouched, and undecided, the great and essential part of the controversy.

The judges, having devised and published the form of a feigned issue, on a wager to try the two questions proposed in the act; having given public notice, that all parties, interested in the issue, would be heard at the trial; and having settled and prescribed the other necessary proceedings, the court met on the 25th of November, 1802. (The chief justice not attending,) at *Sunbury*, when a jury was impanelled, and sworn. No counsel appeared for the grantees. The case is reported in 4 *Dallas*, 237. By the name of "*Attorney-General v. the Grantees* under the act of April, 1792. On the 26th of November, 1802, J. who presided, delivered the following charge to the jury.

That the decision of the court and jury, on the present feigned issue, should "settle the controversies arising from contending claims to lands north and west of the rivers *Ohio*, and *Allegheny*, and *Conewango creek*," is an event devoutly to be wished for, by every good citizen. "It is indispensably necessary that the peace of that part of the state should be preserved, and complete justice done to all parties interested, as effectually as possible." (Preamble to Act of 1802.)

We have no hesitation in declaring, that we are not without our fears, that the good intentions of the legislature, expressed in the law under which we

now sit, will not be effected. We hope we shall be happy enough to acknowledge our mistake hereafter.

It is obvious, that the validity of the claims of the warrant holders, as well as of the actual settlers, must depend upon the true and correct construction of the act of 3d of April, 1792, considered as a solemn contract between the commonwealth and each individual.

The circumstances attendant on each particular case, may vary the general legal conclusion in many instances.

We proceed to the discharge of the duties enjoined on us by the late act.

The first question proposed to our consideration, is as follows; (see it before stated.)

It will be proper here to observe, that on the motion for a *mandamus*, to the late secretary of the Land-Office, at the instance of the *Holland* company; the members of the court, after great consideration of the subject, were divided in their opinions.

The chief justice seemed to be of opinion, that if the warrantee was "by force of arms of the enemies of the *United States*, prevented from making an actual settlement, as described in the act, or was driven therefrom, and should *persist* in his endeavours to make such actual settlement thereafter. "It would amount to a performance of the condition in law. Two of us thought, that in all events, except the death of the party, the settlement and residence contemplated by the act, should precede the vesting of the complete and absolute estate, and that "every warrant holder, &c." (reciting the 9th section,) to this opinion judge *Brackenridge* subscribes.

It would ill become us to say, which of these constructions is intitled to a preference. It is true, that in the preamble of the act of the 2d of April, 1802, it is expressed, that "it appears from the act aforesaid, (3d of April, 1792.) that the commonwealth regarded a full compliance with those conditions of settlement, improvement and residence, as an indispensable part of the purchase, or consideration of the land itself." But it is equally certain, that the true test of title to the lands in question must be resolved into the legitimate meaning of the act of 1792, extracted *ex visceribus suis*, independent of any legislative exposition thereof. I adhere to the opinion which I formerly delivered in bank; yet, if a different interpretation of the law shall be made by courts of a competent jurisdiction in the *dernier resort*, I shall be bound to acquiesce, though I may not be able to change my sentiments. If the mean-

ing of the first question be, are titles under warrants, issued under the law of 3d of April, 1792, for lands north and west of the rivers *Ohio* and *Allegheny*, and *Conewango* creek, good and available against the commonwealth, so as to bar the granting of the same land to other applicants, where the warrantees have not fully and fairly complied with the conditions of settlement, improvement and residence, required by the law, at any time before, or within two years after the dates of the respective warrants, *in time of profound peace, when they were not prevented from making such actual settlement by force of arms of the enemies of the United States*, or reasonable and well grounded fear of the enemies of the *United States*? The answer is ready in the language of the acts before us, and can admit of no hesitation. (Reciting the 9th section of the act of April, 1792, and the above cited part of the preamble of the act of 1802.)

But if the true meaning of the question be, whether under *all* given, or supposed, circumstances of *peace* or *war*, of times of *perfect tranquillity*, or *imminent danger*, such warrants are not *ipso facto* void and dead in law, we are constrained to say, that our minds refuse assent to the general affirmative of the proposition.

We will exemplify our ideas on this subject. Put the case, that a warrant taken out early in 1792, calls for an island, or describes certain land, with accuracy and precision, by the course of waters, or other natural boundaries, distant from any military post, and that the warrantee, after evidencing the fullest intentions of making an actual settlement on the lands applied for, by all the necessary preparation of provisions, implements of husbandry, labourers, cattle, &c. cannot, with any degree of personal safety, seat himself on the lands within two years after the date of the warrant, and by reason of the just terror of savage hostilities? Will not the *proviso* in the 9th section of the act of 3d of April, 1792, excuse the *temporary* non performance of an act, rendered highly dangerous, if not absolutely impracticable, by imperious circumstances, over which he had no controul?

Or, suppose another warrant, depending, in point of description, on other leading warrants, which the district surveyor, either from the state of the country, the hurry of the business of his office, or other causes, could not survey until the two years were nearly expired, and the depredations of the *Indians* should intervene for the residue of the term; will not this, also

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suspend the operation of the forfeiture? Nothing can be clearer to us, than that the terms of the *proviso* embrace and aid such cases; and independent of the strong expressions made use of, we should require strong proof to satisfy our minds, that the legislature could possibly mean to make a wanton sacrifice of the lives of her citizens.

It is said in the books, that conditions rendered impossible by the act of God, are void. Salk. 170. 2 Co. 79, b. Co. Lit. 206, a. 290, b. 1 Roll. abr. 449, l. 50. 1 Fonbl. 199

But conditions precedent must be strictly performed to make the estate vest, and though become impossible, even by the act of God, the estate will not vest; *aliter* of conditions subsequent. 12 Mod. 183. Co. Lit. 218, a. 2 Vern. 339. 1 Chan. ca. 129, 138. Salk. 231. 1 Vern. 183. 4 Mod. 66. We desire to be understood to mean, that the "prevention by force of arms of the enemies of the United States," does not in our idea, absolutely dispense with, and annul the conditions of actual settlement, improvement, and residence, but that it *suspends* the forfeiture by protracting the limited periods. Still the conditions must be performed *cy-pres*, whenever the real terror arising from the enemy has subsided, and he shall honestly persist in his endeavours to make such actual settlement, improvement and residence, until the conditions are fairly and fully complied with.

Other instances may be supposed, wherein the principles of prevention may effectually be applicable. If a person, under the pretence of being an actual settler, shall seat himself on lands, previously warranted and surveyed within the period allowed, under a fair construction of the law, to the warrantee, for the making his settlement, withhold the possession, and obstruct him from making his settlement, he shall derive no benefit from this unlawful act. Co. Lit. 206. Dougl. 661. 1 Roll's abr. 454, pl. 8. Godb. 76. 5 Vin. 246, pl. 25

We trust that we have said enough to convey our sentiments on the first point. Our answer to the question, proposed, is, that such warrants may, or may not, be valid and effectual in law against the commonwealth, according to the several times and existing facts accompanying such warrants. The result of our opinion, founded on our best consideration of the matter is, that every case must depend on, and be governed by, its own peculiar circumstances.

The second question for decision is,

"Are the titles that have issued, &c.?" (as before stated.)

It was stated in evidence on the motion for a *mandamus*, and proved on this trial, that the Board of Property being desirous of settling a formal mode of certificate, on which patents might issue for lands *north* and *west*, &c. required the opinion of the Attorney-General thereon; and on due consideration, a form was afterwards adopted on the 21st of December, 1797, which was ordered to be published in the Pittsburgh Gazette, and patents issued of course, on the prescribed form being complied with.

The received opinion of the supreme Executive Magistrate, the Attorney-General, the Board of Property, and of a respectable part of the bar (whose sentiments on legal questions will always have great and deserved weight,) at that day, certainly was, that if a warrant holder was prevented by force of arms of the enemies of the United States, from making his actual settlement, within two years after the date of his warrant, and afterwards persisted in his endeavours to make such settlement, that the condition was extinguished and gone. *Persisting in endeavours*, was construed to mean something; attempts, essays, &c.; but that did not imply absolute success, or accomplishment of the objects intended to be effected. By some it was thought that the endeavours were only to be *commensurate as to the time* of making the actual settlement, and were tantamount, and should avail the parties "in the same manner as if the actual settlements had been made and continued."

The decisions of the court in *Morris's lessee v. Neighman* and others at Pittsburgh, May, 1799, tended to make the former opinion questionable; and two of the justices of the supreme court, adopted a different doctrine, in their judgment between the Holland company and Tench Cox.

In the argument in that case, it was insisted by the counsel for the plaintiffs, that the Board of Property, in their resolves, and the governor, by his patent, represented the commonwealth, *pro hac vice*; and that interests vested under them, which could not afterwards be defeated.

We cannot subscribe hereto. If the conditions of settlement, improvement, and residence, are indispensable at all events; they become so by an act of the different branches of the legislature. The governor who has a qualified negative in the passing of laws,

cannot *dispense* with their injunctions ; and it cannot be said, that this case falls within the meaning of the 9th section of the second article of the constitution : " The governor shall have power to remit fines and forfeitures, and to grant reprieves and pardons, except in case of impeachment." It relates merely to penalties consequent on public offences. Nor can it be pretended that the Board of Property, by any act whatever of their own, can derogate from the binding force of law. But the fact is, an intention of dispensing with the law of 1792, cannot with any degree of justice, be ascribed to the governor, or Board of Property for the time being. They considered themselves, in their different functions, virtually discharging their respective duties, in carrying the act into execution, according to the general received opinion of the day : they never intended to purge a forfeiture, if it had really accrued, nor to excuse the non-performance of a condition, if it had not been complied with ; agreeably to the public will, expressed in a legislative contract.

The rule of law is thus laid down in England. A false, or partial suggestion by the grantee of the king, to the *king's prejudice*, whereby he is deceived, will make the grant of the king void. Hob. 229. Cro. El. 632. Yelv. 48 1 Co. 44 a. 51 b. 3 Leon. 5. 2 Hawk. 398. 1 Black. 226. But where the words are the words of the king, and it appears *he has only mistaken the law, there he shall not be said to be so deceived* to the avoidance of the grant. *Per sir Samuel Eyre*, J. Ld Raym 50. 6 Co. 55 b. 56 b. *accord*. But if any of the lands concerning which the question arises, became forfeited by the omission of certain acts enjoined on the warrant holders, they do not escheat to the governor for the time being, for his benefit, nor can he be prejudiced, as governor, by any grant thereof, they become vested in the whole body of the citizens, as the property of the commonwealth, subject to the disposition of the laws.

We are decidedly of opinion that the patents, and the prevention certificates recited in the patents, are not conclusive evidence against this commonwealth, or any person claiming under the act of 3d of April, 1792, of the patentees having performed the conditions enjoined on them, although they have pursued the form prescribed by the land-officers. But we, also, think, that the circumstance of recital of such certificates, will not *ipso facto* avoid and nullify the patent, if the actual settlement, improvement and resi-

dence, pointed out by the law, can be established by other proof.

We must repeat on this head, what we asserted on the former, that every case must be governed by its own peculiar circumstances. Until the facts really existing, as to each tract of land, are ascertained with accuracy, the legal conclusion cannot be drawn with any degree of correctness. *Ex facto oritur jus*.

2d. Here we feel ourselves irresistibly impelled to mention a difficulty, which strikes our minds forcibly. Our reflections on the subject have led us to ask ourselves this question on our pillows. What would a wise, just, and independent chancellor decree on the last question? Executory contracts are the peculiar objects of chancery jurisdiction, and can be specifically enforced by chancery alone. Equity forms a part of our law, says the late chief justice, truly. 1 Dallas, 213.

If it had appeared to such a chancellor, by the pleadings, or other proofs, that the purchase-money had been fully paid to the government by the individual for a tract of land, under the law of 3d of April, 1792 ; that times of difficulty and danger had intervened, that sums of money had been expended to effect an actual settlement, improvement and residence, which had not been accomplished fully : that by means of an unintentional *mistake* on the part of the State officers, in granting him his patent, (the officers not led to that mistake by any species of fraud or deception on the part of the grantee,) he had been *led into an error, and lulled into a confidence*, that the conditions of the grant had been *legally* complied with, and, therefore, he had remitted in his endeavours therein ; would not he think that under all these circumstances, thus combined, equity should interpose and mitigate the rigid law of forfeiture, by protracting the limited periods ? And would it not be an additional ground of equity, that the political state of the country has materially changed since 1792, by a surrender of the western posts to the government of the United States, and peace with the Indian nations, both which render an immediate settlement of the frontiers, in some measure, less necessary than heretofore ?

But it is not submitted to us to draw the line of property to these lands, they must be left to the cool and temperate decisions of others, before whom the questions of title may be agitated. We are confined to the wager on the matters before us ; and on both questions we have given you our dispassionate

1784. sentiments, formed on due reflection, according to the best of our judgment. We are interested merely as common citizens, whose safety and happiness is involved in a due administration of the laws. We profess, and feel, an ardent desire, that peace and tranquillity should be preserved, to the most remote inhabitants of this commonwealth.

The jury found a general verdict in favour of the Attorney-General, on the feigned issue; and judgment was rendered in these words: "Whereupon it is considered by the court here, that the said Attorney-General do recover of the said grantees, his damages, costs and charges aforesaid, amounting in the whole to two hundred dollars and six cents, and the court accordingly render judgment thereon for the plaintiff, *subject to the proviso* in the 9th section of the act of assembly, passed the third day of April, 1792.

In the Lessee of *Thomas Buchanan v. Adam Meyer*, Westmoreland, November, 1803, before *Yeates and Smith*, justices. (MSS. Reports.)

Ejectment for 400 acres of land, in Buffalo township Armstrong county, within the jurisdiction of Westmoreland county.

The plaintiff claimed under a warrant for lands across the Allegheny, dated 3d of February 1794. And a survey of 405 acres 112 perches made thereon, 19th of April 1795.

It appeared that no person was settled on the land at the time of the plaintiff's survey. On the 1st of June 1797, a surveyor was employed to trace the lines, but was threatened by defendant, that he would cripple him if he did not desist. He held a gun in his hand, which he cocked, and declared he would shoot any one who would attempt to settle on the lands in question. By these means several persons were intimidated from going on the lands to make a settlement.

It was charged by the court, that there having been no actual settlement anterior to the plaintiff's survey, the plaintiff's title must prevail, unless it has been avoided by his nonperformance of the conditions of settlement, and improvement. But who has prevented this performance? Who expects to derive a benefit from this improper conduct? The answer is, the defendant. If we count the period from which the settlement is to commence, from the 22d of December 1795, the ratification of the treaty at Fort Grenville, the defendant has, within the time allowed for making the settlement, obstructed the plaintiff or his agents, from complying with the law, and according to all our

decisions, shall reap no advantage therefrom. If the case was even dubious, the defendant's lawless conduct should postpone him, on principles of general policy and safety. Verdict for the plaintiff, *instantly*.

And, in the *Lessee of Jones v. Anderson* and others, the same principle was held, and it was determined, That the adverse possession of an actual settler, within the time allowed to the warrantee to make his settlement, is *ipso facto* a *prevention*—And also, that the entry of an actual settler is not *congeable* on a supposed default, without a vacating warrant or application, which must be taken out before suit brought, otherwise, they cannot be admitted in evidence on the trial. In the supreme court, September term, 1808 (MSS. Reports.) The latter point was decided in the same way, by *Yeates, J.* in *Shippen's lessee v. Auchenbach*, at Beaver, September 1806. (MSS. Reports.)

No beneficial consequences were experienced from the proceedings at *Sunbury*, although certain principles were laid down by the court, no one particular title was settled. But every case would, of course, depend upon the facts and circumstances attending it. The object of the act was unfulfilled, law suits were not prevented; nor was the act itself considered in a favourable point of view. It could have no operative, or binding force or effect. The *Holland* company being foreigners, had recourse to the courts of the *United States*, and from their ultimate decision there is no appeal. The subject has therefore become more embarrassed; and the great question arising out of the *proviso* in the 9th section of the act of April 1792, has been solemnly decided in the supreme court of the United States, adverse to the sentiments of the legislature and the decisions of our own courts. This work must exhibit every case, with all its features. It has no partial bearings. It is intended for the people, that they may be informed, not only of the existing laws which govern them, as the legislature has written them; but of judicial constructions upon them.

While these suits were depending in the circuit court of the *United States*, the legislature on the 3d of April 1804, passed an act, entitled "An act for ascertaining the right of this state to certain lands lying north and west of the rivers Ohio and Allegheny, and Conewango creek." (Chap. 2503.)

It enacts, "that applications of actual settlers under the act of 3d of April 1792 (*north &c.*) describing particularly the lands applied for, and filed

with the secretary of the Land-Office, vouching such other requisites as provided for by the act of 22d of September, 1794, (which will hereafter be noticed,) shall for two years from and after the passing of this act, entitle the applicant, his heirs and assigns, to all the privileges and benefits, that an original or vacating warrant would entitle them to, and on the trial of all suits brought, or to be brought between warrantees, and actual settlers, concerning lands situate as aforesaid, the actual settler shall be permitted to plead, and make proof of his improvement and residence, as fully, and with equal force and effect, as if such settler had obtained a vacating warrant; but nothing in this act contained shall be construed to impair any contract or agreement, nor to alter the legal or equitable claims of any person or persons to said lands, nor to release said lands from the conditions of settlement, residence, improvement, purchase money and interest, required by the aforesaid act of 3d of April, 1792, nor to the granting of lands heretofore reserved or appropriated by law.

Sect. 2. Empowers the governor to employ counsel to attend to the interests of the state, in suits commenced, or to be commenced, or which shall be ready for trial at the next April, or any succeeding term, in the circuit court of the United States &c.

The result of this is now to be stated.

In the circuit court, Pennsylvania district. April term, 1805

Huidekoper's lessee v. Douglass. 4 Dal-
las, 392.

Ejectment for a tract of land lying north and west &c. Plaintiff claimed under the *Holland* company, to whom a patent was issued, upon a warrant and survey. The defendant claimed as an actual settler, under the act of 3d of April, 1792; a great many ejectments were depending on the same facts and principles, and on the trial of another ejectment, at a former term, *Washington*, J. had delivered a charge to the Jury, coinciding, generally, with the construction given by the supreme court of *Pennsylvania*, to the act of April, 1792, from which judge *Peters* dissented. It was therefore determined to submit the questions, upon which the opinions of the judges were opposed, to the supreme court of the *United States*, under the provision made, in case of such a disagreement, by the act of Congress, of the 29th of April, 1802. The questions were accordingly stated, at the preceding October term, in the following form.

"1st. Whether under the act of the legislature of Pennsylvania, passed on

the 3d day of April, 1792, entitled "An act for the sale of the vacant lands within this commonwealth" the grantee, by warrant, of a tract of land lying "north and west of the rivers Ohio and Allegheny and Conewango creek, who, by force of arms of the enemies of the *United States*, was prevented from settling and improving the said land, and from residing thereon, from the 10th day of April, 1793, the date of the said warrant, until the first day of January, 1796, but who, during the said period, persisted in his endeavours to make such settlement and residence, is excused from making such actual settlement, as the enacting clause of the 9th section of the said law prescribes, to vest a title in the said grantee."

"2d. Whether a warrant for a tract of land, lying north and west &c. granted in the year 1793, under and by virtue of the said act of 3d of April, 1792, to a person, who by force of arms of the enemies of the *United States*, was prevented from settling and improving the said land, and from residing thereon, from the date of the said warrant, until the 1st of January, 1796, but who, during the said period, persisted in his endeavours to make such settlement, and residence, vests any, and if any, what title in, or to the said land, unless the said grantee shall, after the said prevention ceases, commence, and within the space of two years thereafter, clear, fence and cultivate, at least two acres for every hundred acres contained in his said survey, erect thereon a messuage for the habitation of man, and reside, or cause a family to reside thereon, for the space of five years next following his first settling of the same, the said grantee being yet in full life."

"3d. Whether a grantee in such warrant as aforesaid, who has failed to make such settlement, as the enacting clause of the said ninth section requires, and who is not within the benefit of the proviso, has thereby forfeited his right and title to the said land, until the commonwealth has taken advantage of the said forfeiture, so as to prevent the said grantee from recovering the said land in ejectment, against a person, who, at any time after the two years from the time the prevention ceased, or at any subsequent period, has settled and improved the said land, and has ever since been in possession of the same."

After argument, the opinion of the court was delivered by chief justice *Marshall*, in the following manner.

The questions which occurred in this case, in the circuit court of *Pennsylvania*, and on which the opinion of this court is required, grow out of the act passed

1784. by the legislature of that state, entitled "An act for the sale of the vacant lands within this commonwealth."

The 9th section of that act, on which the case principally depends, is in these words "(see it before cited at large.)"

The questions to be considered, relate particularly to the *proviso* of this section; but, to construe that correctly, it will be necessary to understand the enacting clause, which states what is to be performed by the purchaser of a warrant, before the title to the lands described therein, shall vest in him.

Two classes of purchasers are contemplated.

The one has already performed every condition of the sale, and is about to pay the consideration money; the other pays the consideration money in the first instance, and is, afterwards, to perform the conditions. They are both described in the same sentence, and from each, an actual settlement is required as indispensable to the completion of the title. In describing this actual settlement, it is declared that it shall be made, in the case of a warrant previously granted, within two years next after the date of such warrant, "by clearing, fencing and cultivating at least two acres for every hundred acres contained in one survey, erecting thereon a messuage for the habitation of man, and residing, or causing a family to reside thereon for the space of five years next following his first settling of the same, if he or she shall so long live."

The manifest impossibility of completing a residence of five years within the space of two years, would lead to an opinion, that the part of the descriptions relative to residence, applied to those only who had performed the condition before the payment of the purchase money, and not to those who were to perform it afterwards. But there are subsequent parts of the act, which will not admit of this construction, and consequently, residence is a condition required from the person who settles under a warrant, as well as from one who intitles himself to a warrant by his settlement.

The law, requiring two repugnant and incompatible things, is incapable of receiving a literal construction, and must sustain some change of language to be rendered intelligible. This change however, ought to be as small as possible, and with a view to the sense of the legislature, as manifested by themselves. The reading suggested by the counsel for the plaintiff, appears to be most reasonable, and to comport best with the general language of the section, and with the nature of the sub-

ject. It is by changing the participle into the future tense of the verb, and instead of "and residing, or causing a family to reside thereon," reading, and *shall reside, &c.* The effect of this correction of language will be to destroy the repugnancy which exists in the act as it stands, and to reconcile this part of the sentence to that which immediately follows, and which absolutely demonstrates that, in the view of the legislature, the settlement and the residence consequent thereon, were distinct parts of the condition; the settlement to be made within two years from the date of the warrant, and the residence in five years from the commencement of the settlement.

This construction is the more necessary, because the very words "such actual settlement and residence," which prove that residence is required from the warrantee, prove, also, that settlement and residence, are in contemplation of the law, distinct operations. In the nature of things, and from the usual import of the words, they are, also, distinct. To make a settlement, no more requires a residence of five, than a residence of five hundred years; and, of consequence, it is much more reasonable to understand the legislature as requiring the residence for that term, in addition to a settlement, than as declaring it to be a component part of a settlement.

The meaning of the terms, settlement and residence, being understood, the court will proceed to consider the *proviso*

That part of the act treats of an actual settler, under which term is intended as well the person who makes his settlement the foundation of his claim to a warrant, as a warrantee, who had made an actual settlement in performance of the conditions annexed to his purchase, and if "any grantee in any such original or succeeding warrant," who must be considered as contradistinguished from one who had made an actual settlement. Persons thus distinctly circumstanced, are brought together in the same sentence, and terms are used appropriated to the situation of each, but not applicable to both. Thus, the idea of "an actual settler;" "prevented from making an actual settlement," and after "being driven therefrom," "persisting in his endeavours" to make it, would be absurd. To apply to each class of purchasers, all parts of the *proviso*, would involve a contradiction in terms. Under such circumstances, the plain and natural mode of construing the act, is to apply the provisions, distributively, to the descrip-

tion of persons to whom they are adapted, *reddendo singula singulis*. The proviso, then, would read thus, "*Provided*, that if any such actual settler, shall be driven from his settlement, by force of arms of the enemies of the *United States*, or any grantee, in any such original or succeeding warrant, shall by force of arms of the enemies of the *United States*, be prevented from making such actual settlement, and shall persist in his endeavours to make such actual settlement as aforesaid, then, in either case, he and his heirs shall be entitled to have and to hold the said lands, in the same manner as if the actual settlement had been made and continued." The two cases are the actual settler, who has been driven from his settlement, and the warrantee, who has been prevented from making a settlement, but has persisted in his endeavours to make one.

It is perfectly clear, that in each case, the *proviso* substitutes something for the settlement to be made within two years, from the date of the warrant, and for the residence to continue five years, from the commencement of the settlement, both of which were required in the enacting clause. What is that something?

The *proviso* answers, that in case of "an actual settler," it is his being "driven from his settlement, by force of arms of the enemies of the *United States*;" and in case of his being a grantee of a warrant, not having settled, it is his "persisting in his endeavours to make such actual settlement." In neither case is residence, or persisting in his endeavours at residence, required. Yet the legislature had not forgotten, that by the enacting clause, residence was to be added to settlement, for in the same sentence they say, that the person who comes within the *proviso*, shall hold the land "as if the actual settlement had been made and continued."

It is contended on the part of the defendant, that as the time, during which persistance shall continue, is not prescribed, the person claiming the land, must persist until he shall have effected both his settlement and residence, as required by the enacting clause of the act; that is, that the *proviso* dispenses with the time, and only with the time, during which the condition is to be performed.

But the words are not only inapt for the expression of such an intent; they absolutely contradict it.

If the *proviso* be read so as to be intelligible, it requires nothing from the actual settler who has been driven from his settlement. He is not to persist in

his endeavours at residence, or in other words, to continue his settlement, but is to hold the land. From the warrantee who has been prevented from making a settlement, no endeavours at residence are required. He is to "persist in his endeavours," not to make and to continue such actual settlement, but "to make such actual settlement as aforesaid." And if he does persist in those endeavours, he is to hold the land "as if the actual settlement had been made and continued." The construction of the defendant would make the legislature say, in substance, that if the warrantee shall persist in endeavouring to accomplish a particular object, until he does accomplish it, he should hold the land as if he had accomplished it. But independent of the improbability that the intention to dispense only with the time, in which the condition was to be performed, would be expressed in the language which has been noticed, there are terms used, which seem to restrict the time, during which a persistance in endeavours is required. The warrantee is to persist in his endeavours "to make such actual settlement as aforesaid." Now, "such actual settlement as aforesaid," is an actual settlement within two years from the date of the warrant, and as it could only be made within two years, a persistance in endeavouring to make it, could only continue for that time.

If after being prevented from making an actual settlement, and persisting in endeavours, those endeavours should be successful within the two years, after which the person should be driven off, it is asked what would be his situation?

The answer is a plain one. By persisting he has become an actual settler, and the part of the *proviso* which applies to actual settlers protects him.

If after the two years he should be driven off, he is still protected. The application of external violence dispenses with residence. The court feels itself bound to say so, because the *proviso* contains a substitute, which in such a state of things, shall be received instead of a performance of the conditions required by the enacting clause; and of that substitute, residence forms no part.

In a great variety of forms, and with great strength, it has been argued, that the settlement of the country was the great object of the act; and that the construction of the plaintiff would defeat that object.

That the exclusive object of an act to give lands to settlers, would be the settlement of the country, will be admitted: but that an act to sell lands to set

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ters must have for its exclusive object the settlement of the country, cannot be sorely conceded. In attempting to procure settlements, the treasury was certainly not forgotten. How far the two objects might be consulted, or how far the one yielded to the other, is only to be inferred from the words in which the legislative intention has been expressed. How far the legislature may have supposed the peopling of the district in question, to have been promoted by encouraging actual settlements, though a subsequent residence on them should be rendered impracticable by a foreign enemy, can only be shewn by their own language. At any rate, if the legislature has used words dispensing with residence, it is not for the court to say they could not intend it, unless there were concomitant expressions, which should explain those words, in a manner different from their ordinary import. There are other considerations in favour of the construction to which the court is inclined.

This is a contract; and although a State is a party, it ought to be construed according to those well established principles which regulate contracts generally.

The State is in the situation of a person, who holds forth to the world, the conditions, on which he is willing to sell his property.

If he should couch his propositions in such ambiguous terms that they might be understood differently: in consequence of which sales were to be made, and the purchase money paid, he would come with an ill grace into court to insist on a latent and obscure meaning, which should give him back his property, and permit him to retain the purchase money. All those principles of equity and fair dealing, which constitute the basis of judicial proceedings, require that courts should lean against such a construction.

It being understood that the opinion of the court on the two first questions, has rendered a decision of the third unnecessary, no determination respecting it has been made.

It is directed that the following opinion be certified to the circuit court. 1st, That it is the opinion of this court, that under the act of the legislature of Pennsylvania passed 3d of April, 1792, entitled &c. the grantee, by a warrant, of a tract of land, lying north and west, &c. who by force of arms of the enemies of the United States, was prevented from settling and improving the said land, and from residing thereon from the 10th day of April, 1793, the date of the said warrant, until the 1st

of January, 1796, but who during the said period persisted in his endeavours to make such settlement and residence, is excused from making such actual settlement as the enacting clause of the 9th section of the said law prescribes, to vest a title in the said grantee.

2d, That it is the opinion of this court, that a warrant for a tract of land lying north, &c. granted in the year 1793, under and by virtue of an act of the legislature of Pennsylvania, entitled "An act for the sale of the vacant lands within this commonwealth," to a person who, by force of arms of the enemies of the United States, was prevented from settling and improving the said land, and from residing thereon from the date of the said warrant, until the 1st of January, 1796; but who, during the said period, persisted in his endeavours to make such settlement and residence, vests in such grantee, a fee simple in said land; although after the said prevention ceased, he did not commence, and, within the space of two years thereafter, clear, fence, and cultivate, at least two acres for every hundred acres contained in his survey for said land, and erect thereon a messuage for the habitation of man, and reside, or cause a family to reside thereon for the space of five years next following his first settling of the same, the said grantee being yet in full life.

Upon this opinion of the supreme court, the cause was again brought before the jury, and after the evidence was closed, and the arguments of counsel, *Washington, J.* delivered the following charge to the jury.

"When this cause was tried before, the counsel for the defendant insisted, that the plaintiff's title was built upon a contract, which he had not complied with, that he was to make a settlement, such as the enacting clause of the 9th section requires, unless prevented from doing so, by the enemies of the United States; in which latter case, he was, not only to prove a persistence in endeavours to make the settlement, during the period of the war; but was to go on to make it, after the prevention ceased. This question was so difficult, as to divide, not only this court, but the courts of this state. The question was adjourned to the supreme court, who have decided, that a warrantee, who from April, 1793, to the 1st of January, 1796, was prevented by the enemies of the United States, from making such settlement as the law required, but, who, during that period, persisted in his endeavours to make such settlement, is entitled to hold his land in fee simple, although after the preven-

tion ceased, he made no attempt to make such settlement. *This we must consider as the LAW OF THE LAND and govern our decision by it.*

The questions are,

1st, Was the Holland company, from April, 1793, to July 1, 1796, prevented from making their settlement? And,

2d, Did they persist in endeavours, during that period, to make it?

What is the legal meaning of prevention, and persistence in endeavours? Were they prevented, and did they persist, within this meaning? The first are questions of law, which the court are to decide; the latter are questions of fact, proper for your determination. What were they prevented from doing, in order to excuse them? The answer is, from clearing, fencing, and cultivating, two acres of land in every hundred acres contained in their warrant, from building a house thereon, fit for the habitation of man, and from residing, or causing a family to reside thereon. To what extent were their endeavours to go? The answer is, to effect these objects. It was not every slight, or temporary danger, which was to excuse them from making such settlement, but such as a prudent man ought to regard. The plaintiffs stipulated to settle as a society of husbandmen, not as a band of soldiers. They were not bound to effect every thing which might be expected from military men, whose profession is to meet, to combat, and to overcome danger. To such men it would be a poor excuse, to say, they were prevented by danger, from the performance of their duty. The husbandman flourishes in the less glorious, but not less honourable walks of life. So far from the legislature expecting, that they were to brave the dangers of a savage enemy, in order to effect their settlements, they are excused from making them, if such dangers exist. But they must persist in their endeavours to make them, that is, they are to persist if the danger is over, which prevented them from making them. For it would be a monstrous absurdity to say, that the danger, which, by preventing them from making the settlements, would excuse them, would not, at the same time, excuse them from endeavours to make them, so long as it existed. It would be a mockery to say, that I should be excused from putting my finger into the blaze of this candle, provided I would persevere in my endeavours to do it, because, by making the endeavours, I could do it, although the consequences would be such as I was excused from incurring. If, then, the company were

prevented from making their settlements, by dangers from a public enemy, which no prudent man would, or ought to encounter, and if they made those endeavours, which the same man would have made to effect the object, they have fully complied with the proviso of the 9th section.

How, then, are the facts? That a public war between the United States, and the Indian tribes, subsisted from April, 1793, and previous to that period, until late in 1795, is not denied. And, though the great theatre of the war lay far to the north west of the land in dispute, yet it is clearly proved, that this country, during this period, was exposed to the repeated irruptions of the enemy, killing and plundering such of the whites as they met with, in situations where they could not defend themselves. What was the degree of danger produced by those hostile incursions, can only be estimated by the conduct of those who attempted to face it. We find them, sometimes working out in the day time, in the neighbourhood of the forts, and returning within their walls, at night, for protection; sometimes giving up the pursuit in despair, and retiring to the settled parts of the country; then returning to this country, and again abandoning it. We sometimes meet with a few men hardy enough to attempt the cultivation of their lands, as sociating implements of husbandry, with the instruments of war, the character of the husbandman, with that of a soldier; and yet I do not recollect any instance, with this enterprising, daring spirit, a single individual was able to make such a settlement as the law required. You have heard what exertions the Holland company made, you will consider what was the state of that country during the period in question, you will apply the principles laid down by the court, to the evidence in the cause, and then say, whether the title is with the plaintiff or not. Verdict for plaintiff.

But, notwithstanding this decision of the highest tribunal of our country, the controversy still subsists. It has not tended to assuage, but rather to irritate opposition; and the consequences can only be conjectured, unless the wisdom of the legislature should adopt some moderate, conciliatory system, which may draw together contending parties. An object indeed, most devoutly to be wished!

But independent of this great litigated question, it is of no small moment to ascertain precisely, what constitutes a *settlement*, under this law; and very great light is shed upon this

1784. point, in *Balfour's lessee v. Meade*, in the circuit court of the United States for the Pennsylvania district, reported in 4 Dallas, 363. The facts were these :

The plaintiff claimed four tracts of land, *north and west*, &c. for which he brought this ejectment. His title rested on settlement rights, surveys and warrants. In 1793, he was a surgeon in the army, in garrison at fort *Franklin*. He took some of the soldiers, went out, cut down a few trees, and built up five pens, or cabins, about 10 feet square, and, without putting covers on them, returned back to the fort in six or seven days. In April, 1795, he had these five tracts surveyed in the name of himself, *Elizabeth Balfour*, and three others, each 400 acres. The deputy-surveyor had, upon application of the plaintiff, directed one *Wilson* to make the surveys, but something preventing him from doing it, the plaintiff employed one *Steel* to do it, and upon returning the surveys to *Stobely*, the deputy-surveyor, he prevailed on him to write an authority to *Steel* to make the surveys, which he did, and antedated it, in order to make it appear to precede the surveys. In May, 1795, he obtained warrants of acceptance for two of the surveys of two of the tracts, having paid the consideration money for all.

In autumn 1794, the defendant, finding no person settled upon these tracts, built cabins upon the four tracts in controversy, covered them, or some of them, and then went off, not returning again till November, 1795, when he came with his family to reside in one of the cabins, and fixed settlers upon the other tracts. In July, 1795, the plaintiff gave notice to the defendant, that he claimed the tracts in question, that he intended to settle them, and forewarned him to proceed no further with his improvements.

In January, 1796, the defendant *caveated* the plaintiff in form, and the same being tried before the board of property in March, 1800, the caveats were dismissed, and warrants were ordered to issue, but they never did issue, in consequence of doubts afterwards existing respecting the plaintiff's title.

In April, 1796, the plaintiff made engagements with some persons to settle these lands for him ; but after they had seen and approved the lands, they declined going on them on hearing of the defendant's claim.

It was in proof by many witnesses, that the war with the *Indians* rendered it dangerous to settle that country, during the years, 1793, 1794, 1795, and

that but few attempted before the spring or autumn of 1796.

Washington, justice, after recapitulating the different sections of the act of 1792, observed that the 8th section was intimately connected with the 3d section, and directed the deputy-surveyor to survey and mark the lines of the tract, upon the application of the settler ; and that such survey had no other validity, than to furnish the particular description, which must accompany the application at the Land-Office for a warrant. That the 4th section, among other regulations, protected the title of an *actual settler*, against a warrant entered with the deputy-surveyor, posterior to such actual settlement.

That the 9th section of the act referred, *exclusively*, to the lands *north and west* of the *Ohio* &c. he then recited the 9th section at large, stopping at the *proviso*, (see the section before,) and proceed thus ;

Let us now consider this case as if the law had stopped here ; a title to the land in controversy, lying *north and west* &c. could be acquired in no other manner, than by *actual settlement*, no sum of money could entitle a person to a warrant, unless the application was preceded by actual settlement on the land, or, if not so preceded by actual settlement, the warrant would give no title, unless it were followed by such settlement within two years thereafter.

The question then is, what constitutes such actual settler, within the meaning and intention of this law, as will vest in him an inceptive title so as to authorize the granting to him a warrant ; not a *pedis positio*, not the erection of a cabin, the clearing, or even the cultivation, of a field. These acts may deserve the name of *improvements*, but not *settlements*, there must be an occupancy, accompanied with a *bona fide* intention to reside, and live upon the land, either in person, or by that of his tenant, to make it the place of his habitation, not at some distant day, but at the time, he is improving ; for if this intention be only future, either as to his own personal residence, or that of a tenant, then the execution of that intention, by such actual residence, fixes the date ; the commencement of the settlement ; and the previous improvements will stand for nothing in the calculation.

The erection of a house, and the clearing and cultivating the ground, all or either of them may afford evidence of the *quo animo* with which it was done ; of the intention to settle ; but neither, nor all, will constitute a settlement, if unaccompanied by resi-

dence. Suppose, then, improvements made, the person making them declaring at the time, that they were intended for temporary purposes of convenience, and not with a view to settle and reside; could this be called an actual settlement within the meaning and intention of the legislature? Surely no; but though such acts, against express declarations of the *quo animo*, will not make a settlement, it does not follow that the converse of the proposition will; for, a declaration of an intention to settle, without actually carrying that intention into execution, will not constitute an actual settlement.

How do these principles apply to the case of the plaintiff? In 1793, he leaves the fort at which he was stationed, and in which he was an officer, with a few soldiers; cuts down some trees, erects four or five *pens* (for, not being covered, they do not deserve the name of cabins,) and in five, six or seven days, having accomplished this work, he returns into the fort, his former place of residence. Why did he retreat so precipitately? We hear of no danger existing at the time of completing these labours, which did not exist during the time he was engaged in them. What prevented him from proceeding to cover the cabins and from inhabiting them? Except the state of general hostility, which existed in that part of the country, there is no evidence of a particular necessity for flight, in the instance of this plaintiff. It is most obvious, that the object of his visit to this wilderness was to erect what he considered to be improvements; but they were, in fact, uninhabitable by a human being, and, consequently, could not have been intended for a present settlement. He was, besides, an officer in the army; and, whilst in that service, he could not settle and reside at his cabin, although the country had been in a perfect state of tranquillity. In short, his whole conduct, both at that time and afterwards; his own statements when asserting a title to the lands, the recitals in his warrants of acceptance, and certificates of survey, all afford proof which is irresistible, that he did not mean, in 1793, to settle. Mistaking the law, as it seems many others have done in this respect, he supposed that an improvement was equivalent to a settlement, for vesting a right in those lands. It is not pretended even now, nor is it proved by a single witness who assisted in making the improvements, that he contemplated a settlement. It has been asked, could the legislature have meant to require persons to sit down, for a moment, on land encompassed by danger

from a savage enemy? I answer, no: at such a time it was very improbable that men would be found rash enough to make settlements. But yet no title could be acquired without such a settlement, and if men were found hardy enough to brave the dangers of a savage wilderness, they might be called imprudent men, but they would, also, deserve the promised reward, not for their boldness, but for their settlement.

The first evidence we have of an intention in the plaintiff to make an actual settlement was in the spring of 1796, long after the actual *bona fide* settlement of the defendant with his family; for I give no credit to the notice from the plaintiff to the defendant in July, 1795, since so far from accompanying it with actual settlement, he speaks of a future settlement, which, however, was never carried into execution. Every thing which I have said with respect to the 400 acres surveyed in the name of *George Balfour*, will apply *a fortiori* against the three other surveys in the name of *Elizabeth Balfour, &c.* who, it is not pretended, were ever privy even to the making of the cabins, or ever contemplated a settlement upon those lands.

If the law, then, had stopped at the *proviso*, it is clear that the plaintiff never made such a settlement as would intitle him to a warrant. But he excuses himself from having made such a settlement, as the law required, by urging the danger to which any person, attempting a residence in that country, would have been exposed. He relies on the *proviso* to the 9th section of the law, which declares, &c. (see it before.)

Evidence has been given of the hostile state of that country, during the years 1793, 1794, 1795, and the danger to which settlements would have been exposed. We know that the treaty at fort Grenville was signed on the third of August, 1795, and ratified the 22d of December, in the same year. Although *Meade* settled with his family in November 1795, it is not conclusive proof that there was no danger even then; and, at any rate, it would require some little time and preparation, for those who had been driven off, to return to their settlements; and if the cause turned upon the question, whether the plaintiff had persevered in his exertions to return and make such settlement, as the law requires, I should leave that question to the jury, upon the evidence they have heard. But the plaintiff to intitle himself to the benefit of the *proviso*, should have had an incipient title at some time or other, and this could

1784. only have been created by actual settlement, preceding the necessity, which obliges him to seek the benefit of the *proviso*, or by warrant.

I do not mean to say, that he must have had such an actual settlement, as this section requires to give a perfect title; for, if he had built a cabin, and commenced his improvement in such manner, as to afford evidence of a *bona fide* intention to reside, and had been forced off by the enemy, at any stage of his labours, persevering, at all proper times afterwards, in endeavours to return, when he might safely do so, he would have been saved by the *proviso*, which was made for his benefit; this he has not done.

Decisions in the supreme court, and in the common pleas, of this state have been cited at the bar, two of which I shall notice for the purpose of pointing out the peculiar mark, which distinguishes them from the present, and to prevent any conclusions from being drawn from what has been said, either to countenance, or impeach, those decisions. The cases I allude to, are, the *Holland company v. Cox*, and the feigned issue tried at Sunbury.

The incipient title, under which the plaintiff's claimed in those cases, were *warrants*, authorized by the 3d section of the law. The incipient title in the present case, is *settlement*. The former was to be completed by settlement, survey and patent. This was to precede the warrant; and for the more distinct explanation of this distinction, it will be important to ascertain what acts will constitute an actual settler to whom a warrant may issue, and what constitute an actual settlement as the foundation of a title. I have before explained who may be an actual settler to demand a warrant, namely, one who has gone upon, and occupied land, with a *bona fide* intention of an actual present residence, although he should have been compelled to abandon his settlement, by the public enemies, in the first stages of his settlement. But actual settlement, intended by the 9th section, consists in clearing, fencing and cultivating, two acres of ground at least, on each one hundred acres, erecting a house thereon, fit for the habitation of man, and a residence continued for five years next following his first settling, if he shall so long live. This kind of settlement more properly deserves the name of *improvements*, as the different acts to be performed clearly import. This will satisfactorily explain what at first appeared to be an absurdity in that part of the *proviso*, which declares, that "if such actual settler

shall be prevented from making such actual settlement, &c." The plain meaning is, that if a person has once occupied land, with an intention of residing, although he has neither cleared nor fenced any land, and is forced off by the enemies of the *United States*, before he could make the improvements, and continue thereon for five years; having once had an incipient title, he shall be excused by the necessity, which prevented his doing what the law required, and in the manner required; or, if the warrant holder, who, likewise, has an *incipient title*, although he never put his foot upon the land, shall be prevented by the same cause, from making these improvements, &c. he, too, shall be excused, if, as is required, also, of the settler, he has persevered in his endeavours to make those improvements, &c.

But what it becomes such a grantee to do, before he can claim a patent, or even a good title, is quite another question, upon which I give no opinion.

As to the plaintiff's surveys and warrants, they cannot give him a title. Not the surveys, 1st. Because they are a mere description of the land, which the surveyor is authorized by the 8th section to make, and the applicant for the warrant is directed by the third section, to lodge in the Land-Office, at the time he applies for the warrant. It is merely a demarcation, a special location of the land intended to be appropriated, and gives notice of the bounds thereof, that others may be able to make adjoining locations, without danger of interference: that is not such a survey as is returnable, so as to lay the foundation of a patent. 2d. It is not authorized by a warrant? 3d. It was not for an actual settlement. 4th. It was not made by an authorized surveyor, if you believe, upon the evidence, that the authority to *Steel* was antedated, and given after the survey was returned. Not the warrant. 1st. Because it was not a warrant of title, but of acceptance. 2d. It is not founded on *settlement*, but *improvement*, and if it had recited the consideration to be actual settlement, the recital would have been false in fact, and could have produced no legal, valid consequence.

As to the *caveat*: the effect of it was to close the doors of the Land-Office against the further progress of the plaintiff in perfecting his title. The dismissal of it again opened the door; but still the question as to title is open for examination in ejectment; if brought within six months, and the patent will issue to the successful party.

The plaintiff, therefore, having failed to shew a title sufficient to enable him

to recover in this action, it is unnecessary to say any thing about the defendant's title; and your verdict ought to be for the defendant. Verdict for defendant, accordingly.

See *Addison's* reports, 335, to 342.

In the case of *Alexander Wright v. Brice M'Gehan*, at Allegheny, November, 1801, (MSS. Reports.) Action of covenant.

The action was brought on an article of agreement dated 8th of March, 1796, whereby the plaintiff had sold all his right and claim to an improvement of 400 acres north and west of the river Ohio, adjoining &c. in consideration of \$ 125, payable on 1st of May, 1796, and the like sum in one year thereafter: but if the population land company should hold these lands by their warrants, then the consideration money to be returned to the defendant, without interest.

The defendant had paid no part of the consideration money. To shew that the money was not recoverable, he produced a warrant dated 14th of April, 1792, to *Michael Shubert* for 400 acres north and west of Ohio, adjoining land granted to Marshal Spring; and a survey of 400 acres made thereon, on the 13th of March, 1795, by *John Power*, D. S. The leading warrant had issued in the name of *Matthew M'Connell* for 400 acres extending along big Beaver creek, near the falls thereof, and was entered in the books of *James Carrothers*, then deputy surveyor of the district on the 10th of June 1793. *Shubert's* warrant was entered on the same day, and ninety-one warrants intervened between them.

The plaintiff about the time of the survey made for *Shubert*, (or one or two days before it, as it probably appeared from circumstances, though the particular day was not shown by direct testimony,) erected a cabin about fourteen feet square on the land, covered it in, but without chimney or door in it; and sold his improvement to defendant: but no one had then lived on the land, or cultivated any part of it.

For defendant it was insisted that the plaintiff had no title to the lands sold, under his fancied improvement: and that want of title, without eviction was a good defence in an action for the price of the land sold. *Addison*, 123.

For the plaintiff it was urged, that under the law of 3d of April, 1792, it was enacted, that applications should contain a particular description of the lands applied for, (§3.) and it is provided by the act of 22d of April, 1794, that no warrants except those wherein the land is particularly described, shall

in any manner affect the title of the claim of any person having made an actual improvement, before such warrant is entered and surveyed in the deputy surveyor's books (§ 2.) and the act of 22d of September, 1794, has the same proviso in favour of improvers, (§ 2.) Here it may fairly be inferred that the house was built before the survey was made for the population company, which was the inception of an actual improvement under the law of April, 1794. It could not be contended that *Shubert's* warrant was descriptive of any particular ground: it depended on the location of ninety-two other warrants, and necessarily must shift its situation, according to the surveys made on the prior warrants. If such warrants must be postponed to improvements, then the title of the plaintiff was preferable to that of the population company: but if the house erected, should be thought not to merit the appellation of an improvement, still the plaintiff is intitled to recover the value of the house. The defendant, after contracting for the land, received the possession, and then purchased of the population company.

By the Court, (*Teates and Smith:*) The meaning of the agreement appears clearly on the face of it. If the title of the population company was better than the plaintiff's, the latter was bound to return the consideration, if he had received it: but if the plaintiff had no title, the defendant was not bound to pay. The warrant being indescriptive, would give way to a *bona fide* settlement and improvement, if made previous to the survey, under the proviso in the act of 22d of April, 1794, but not to a land-jobbing cabin made without an intention of residence. The improvement meant in this law, can be no other than that described in the act of December 30th, 1786, and this fully appears by the act of 22d of September, 1794. On this point the court expressed the grounds of their opinion fully in *Mead's* lessee v. *Haymaker*.

But it is said, the plaintiff should be allowed for his cabin. Why so? No such provision was made in the article, if the title of the population company was preferable. The effect of a recovery by that company against the defendant, would be, that the judgment would be conclusive evidence against the now plaintiff. At present, the point of title is open for investigation by the present jury: and the court are clearly of opinion, that the want of title in the plaintiff is a good defence in the present suit, though there has been no eviction. Verdict for the defendant.

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In the Lessee of *William Clemmins v. Philip Gottshall, and Robert Johnston*, at *Venango*, October, 1806, in the circuit court, before *Neates, J.* The case was this:

Ejectment for 400 acres and 131 perches of land in Sugar creek township. It appeared in evidence, that *David Meade, William Johnston*, the plaintiff, *William Clemmins and Robert Johnston*, entered into a written agreement at *Cussewago*, on the 26th of December, 1794, whereby it was stipulated, that *Meade* should discover unappropriated lands, and make surveys thereon; the other parties were to find all the hands, and provisions for chain carriers, and blazers, and to build good cabins at least 12 feet square, on each tract; and *Meade* was to have one third of the tracts, and the other parties the remainder, to be ascertained by ballot, or lottery; *Meade* to receive twenty shillings for surveying two thirds of the land, for each tract.

In pursuance thereof, in January, 1795, 13 tracts of land were discovered and surveyed, and a cabin was built on the lands in dispute, which served as a place of rendezvous. The allotment of the different tracts was made by mutual consent before the several improvements were completed; and the premises in question, with two adjoining tracts, were assigned to *Clemmins*, by the particular desire of the two *Johnston's*. They proceeded to erect their cabins in the spring following, but they deserted their lands and separated, on hearing of the murder of two of the inhabitants by the Indians in June, 1795, at the mouth of little *Concaw* creek. In the close of the same summer, *Clemmins* came out with another person, and did some work on the two adjoining tracts, but none on that in controversy, and returned in the fall to *Westmoreland* county. In 1795, he sold his interest in the three tracts to one *Patterson*, for 300 dollars. Some of the witnesses testified, that he acknowledged to them to have received part of the purchase money, and obligations for the remainder. *Clemmins* married in April, 1796, and during that spring, came out with *Patterson*, and gave him possession. The latter resided and worked on the tract about three months, when he left it much embarrassed, and never returned, the land lying vacant. During this spring, *Clemmins* improperly obtained the possession of a tract of land above *Meadeville*, claimed by one *Magoffin*; but an ejectment having been commenced against him, he quitted the same, and sold to *John Davis*. He afterwards stopped at the improvement

of *Richard Vansickel*, known by the name of *Wentworth's* tract, and seized on the possession of it, as vacant; but his goods were thrown out of the cabin. In August, or September, 1796, he passed through *Meadeville* with his wife, and two loaded horses, and took possession of the lands in dispute. They again went back to *Meadeville* with their horses, and returned to the cabin with other loads. They had their provisions, blankets, and household articles about them, and continued in the cabin a few days, and then returned to *Westmoreland* county, being in want of fodder for their cattle. The wife also was pregnant, and alleged she could not obtain the necessary assistance in the unsettled state of the country; but he declared his determination to return to the lands. He put a lock on the door of his cabin, and left a number of his household articles therein. In March, or April, 1797, the cabin was consumed by fire, either by accident, or design, and *Johnston*, one of the defendant's, was then seen employed in cutting house logs near there. In June following, *Clemmins* being under an engagement to reap grain seven miles from *Greensburg*, sent out his wife, and infant child with her father, to take possession of the lands in question. She carried with her a horse loaded with provisions, and bed clothes, and family necessities, with money to purchase more. She came to the land, and required the possession thereof, but the same was refused to her by *Robert Johnston*, who alleged, she had no house there. She then went with her father to *Meadeville*, where she was afterwards joined by her husband. He likewise demanded possession of the premises from *Robert Johnston*, but was denied the same by him. The latter continued in possession for some years, until he sold to *Thomas Russel*, with a covenant to make him a good title. *Russel* afterwards sold to *Gottshall*. *Clemmins* became greatly indebted, and was obliged to leave the country for some time. The present ejectment was brought to June term, 1806, at which time, a house, one end of a barn and spring house were built, and 15 acres of land cleared.

In the course of the trial, a survey was offered in evidence on the part of the plaintiff, made for him on the 11th of February, 1806, by *Samuel Dale*, the deputy-surveyor of the district, under his actual settlement. This was objected to, as the 8th section of the act of 3d of April, 1792, authorizes surveys, in the case of settlers actually in possession of the lands at the time of application to the deputy-surveyor.

The plaintiff should have applied for an order of the Board of Property, whereon to found his survey.

To this it was answered, that if this construction of the law was correct, no person defrauded of his possession as an actual settler, before he had obtained a survey, could ever receive redress. It is well known, that unless a *caveat* be filed, the Board of Property will not grant an order of survey, in the case of settlements. But the language of the act is in the *past* tense. "The deputy surveyor of the proper district, shall, upon the application of any person who *has* made an actual settlement and improvement, &c. survey and mark out the lines of the tract, &c." Ejectment is a possessory action, and this court has determined, that an official survey must precede the recovery by an actual settler.

By the Court. The survey must be read in evidence. Whether there was such an actual settlement by the lessor of the plaintiff as would authorize the survey, under all the circumstances of the case, must, in the sequel of the cause come before the court and jury for decision.

After argument by the counsel on both sides, *Yeates, J.* observed, that the case presented three several questions for decision: 1st. Whether the lessor of the plaintiff could be considered at any time, as an actual settler? 2dly, Whether he had forfeited such claim? 3dly, Had he been guilty of *laches* in not bringing this suit earlier?

The opinions entertained in the country after the passing of the act of the 3d of April, 1792, as to improvement cabins, were highly erroneous. The great object of the law was to encourage the settlement of the country, and the cultivation of the soil by the hardy sturdy yeomanry. Preference was given to persons who were willing and desirous to settle and improve the lands, north and west of the *Ohio* and *Allegheny*; but it was indispensibly necessary, that they should unite both characters. Hence it results, that the cabins built on the thirteen tracts gave no efficient pre-emption right to the lands thereby intended to be secured, but operated as *scare-crows* to keep off others, who entertained the delusive popular ideas of fancied improvements. A settlement, in its nature, possesses characteristic features of improvement; but the converse of the proposition is not true.

The 9th section of the act of 3d of April, 1792, prescribes the duration of the settlement, the extent of the improvement, and the period within which

it shall be made; but it does not define what a settlement is. For this definition, we must recur to the act of December 30th, 1786, which declares, "that by a settlement shall be understood, an actual, personal, resident settlement, with a manifest intention of making it a place of abode, and the means of supporting a family, and continued from time to time, unless interrupted by the enemy, or by going into the military service of this country during the war." It corresponds with the correct idea of what was called an *improvement* before the American Revolution. The *animus residendi* in the first instance, and the *animus revertendi* in the case of evacuating the possession for a temporary purpose, were deemed the essence of a *bona fide* improvement. The girdling of a few trees, or mauling of rails, without unequivocal intentions of residence, and return to the premises, to make it a place of permanent abode, were not dignified with that character. But a man who had erected his cabin, sowed the land, inclosed a field, or made any other preparations, which clearly evinced a full determination to make the place his home, and immediate settlement, might with safety leave the land in order to bring out his family, or to perform other acts of duty or charity; and provided he returned within a reasonable time, his possession was secured to him. If he stayed away an unreasonable time, he would be presumed to have *abandoned* his original intention of settlement; but this, like other presumptions, might be repelled by proof. It would be incumbent on him to account for his long absence in a satisfactory manner. Sickness, or other inevitable accident, on such occasions, have always been considered as sufficient excuses for such delay in returning.

Patterson appears to have been the first actual settler on the lands in question, he resided and worked on the land near three months: but he abandoned the tract and never returned. In the language of the act of December, 1786, his settlement was not *continued from time to time*.

Clemmins, the lessor of the plaintiff, succeeded to the vacant possession. But to him it has been objected, that he had sold the tract, and received, at least a part of the consideration: and further, that he was pursuing other objects of speculation, in possessing himself of *Mageff's* and *Wentworth's* tracts, above and below *Meadville*. To this, it is fairly answered, that the claim of *Patterson* was wholly forfeited by his abandonment, and that he, nor any other on

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his behalf, never returned to the land. In consequence thereof, any person desirous of settling and improving, might lawfully enter on the possession; and the former possessor being indebted to him for the premises, was a strong equitable circumstance in his favour. No impropriety of conduct as to the two tracts of land about *Meadville*, can invalidate his pretensions to the lands in question. Subsequent to these transactions, he resumed the possession of this tract, with his wife, and had no other home. Every thing he possessed in the world was contained within the logs of his cabin. I abominate the practice which has prevailed in this new country, of slipping into the possession of others, who in many instances, have been necessitated to quit their settlements for temporary purposes; and have frequently, during the present circuit, expressed my decided sentiments on that subject. It is absurd in the extreme, to suppose that the legislature, who enacted the law of 3d of April, 1792, ever intended to confine actual settlers within the lines of their 400 acres, as if they were inclosed by the four walls of a prison!

To the jury it belongs to decide, whether, when *Clemmins* took possession of this tract in August or September, 1796, he did not shew "a manifest intention of making it a place of abode, and the means of supporting a family." If they shall be of opinion, from a careful review of all the circumstances, that such was the bent, or settled purpose of his mind at the time, then he must be considered as possessing the incipient right of an actual settler. It is the intention unequivocally shewn, not the extent of the improvement, which stamps the reality of an actual settlement, in the first instance.

If the jury shall determine in favour of the plaintiff upon the first point, they must then decide, whether the claim has been forfeited. They will judge of the ground of his discontinuing the possession in the fall; the want of fodder for his cattle, and the fears of his wife in her pregnancy, on account of the thinness of the settlement; they will also determine whether he absented himself an unreasonable time. *Clemmins* expressed his intentions of returning to different persons, at various times. He left most of his property in the cabin; and he placed a lock on the door. His cabin was burnt early in the spring of 1797, which might have come to his knowledge: when his wife, with her father, demanded possession in June following, her child was but two months old; and he frequently afterwards repeated his demand on *Robert Johnston*

before he instituted his ejectment. The presumed abandonment is negatived by all his acts; but the period of his absence for nine months constitutes the chief objection against him. The case seems contradistinguished as between the present parties from common instances of dereliction. Is it consistent with justice, after the agreement of December, 1794, under which the premises were assigned to *Clemmins*, at the instance of *Robert Johnston* and his brother, that the said *Robert* should infer an abandonment of the land without the most cogent proof? This agreement forms a strong part of the plaintiff's case.

Yet if the plaintiff has been guilty of *laches*, whereby innocent persons have been injured, he ought to be postponed. If valuable improvements have been made upon the land, through ignorance of his claim, and monies paid by purchasers for which they have no redress, the poverty of *Clemmins* will not avail him, for not having brought this suit for ten years. But here the claim was fully known to *Robert Johnston*, one of the original parties to the agreement: he made the chief improvements on the land, and is responsible for the goodness of the title. Nor has it appeared in evidence, that either *Russell*, or *Gottshall*, have paid any part of the consideration money. The objection on the ground of *laches* does not seem to hold in the present instance against the plaintiff's recovery.

The jury found a verdict for the plaintiff. (MSS. Reports.)

It was held in the Lessee of *M'Gloughlin v. Maybury*, in the supreme court, September term, 1803. That one cannot be an actual settler on two tracts of land; but that his children, if of sufficient age to reside on and cultivate the land, may be actual settlers. It was also held in that case, that indulgence will be given to a settler, who quits his residence for a temporary purpose, with intention of returning to it; and that the title of a settler does not depend on the extent of his improvement, but on the *animo residendi*, and the possession continued. (MSS. Reports.)

So, in the case of *Wright v. Small*, in error, supreme court, September, 1809. (MSS. Reports.) It was held, that warrants under the act of 3d of April, 1792, should contain a special description of the lands; a special entry in the books of the deputy-surveyor, cannot supply the defect thereof; nor is any one bound to take notice of such entry. And, if an improvement is begun with an intent to make an immedi-

ate settlement, and prosecuted with due diligence till a settlement is completed, the title will relate to the first improvement. If delay takes place in the settlement, it lies on the improver to account for it in a reasonable manner.

And, in *Cosby v. Brown*, (in error,) it was held, that when an actual settler, who has made some improvements, has been deterred by the violence of a younger settler from completing his settlement, and has for several years neglected to take steps for the recovery of his possession, it is fact for the jury to decide, whether he has not relinquished his settlement. He does not stand in the situation of a person having a legal title, who may bring an ejectment at any time within twenty-one years.

The case was this. The plaintiff claimed the land as an actual settler. He commenced his settlement in the year 1797, erected a small house, cleared a piece of land, sowed an acre and an half of rye, fenced the ground, and went away in the autumn, with an intention to return in the spring, and complete his settlement. In the spring of 1798, he did return; but one *James Cosby*, under whom the defendant entered, had in the mean time taken possession of the cabin, and by the menace of violence, prevented *Brown* from continuing his improvement. *Brown* left the land, saying that he would not contend with force, but would resort to the law. He returned to *Miffin* county, his former place of residence, and until the 15th of March, 1805, when the present action was commenced, he took no measures to recover his possession. The *Cosbys* remained constantly on the land from 1798, and made several improvements.

Tilghman, C. J. delivered the opinion of the court.—There is no doubt but the plaintiff commenced a settlement in 1797, and returned to it in the spring of 1798, with a view of completing it. His right was *prior* to the defendant's; and if he had commenced an action soon after being prevented by the defendant, he must have recovered against him. But, although he might have recovered if he had brought suit in a reasonable time, it does not follow that he may recover after a lapse of seven years. The law with respect to actual settlers was laid down by this court, explicitly in the case of *Porter* and *Wright*, plaintiffs in error, v. The Lessee of *Small*, defendant in error. If the settlement once commenced, is not continued without interruption, it lies upon the settler to account for it by some reasonable cause. A liberal al-

lowance is made for a man who has evinced a *bona fide* intention to settle. Danger from an enemy, the death or sickness of one party or his family, the difficulty of procuring provisions, and a variety of other circumstances, are to be taken into consideration. But it must always be remembered, that the title is *imperfect*, till completed by improvement and residence of five years, and that though fairly and legally begun, it may at any time be relinquished. It is no uncommon thing for differences, and even force to take place between settlers on the same tract; but although the prior settler may be in the first instance ill used, and driven off by force, he may not always chuse to pursue his settlement. As long as he is prevented by the apprehension of violence, he stands excused from prosecuting his improvement. And even if he brings no suit, it is possible he may fairly account for it. But I cannot assent to the broad proposition contended for, that a man who is once prevented by violence may retire from the land, and recover in ejectment at any time within twenty-one years. Such unreasonable delay may take place, as would justify the younger settler, who had made use of force, in thinking that his adversary had relinquished all idea of settlement; and in that case the law will not suffer the labour and expenses of years to be swept away. The title of a settler under our act of assembly, is of a special nature. Until completed by improvement and residence, it is not to be compared to the case of a person possessed of a perfect legal estate, whose right of entry is not barred by less than twenty-one years of adverse possession. We have been accustomed to leave it to the jury to decide, under the circumstances of each particular case, whether the settler has followed up the commencement of his settlement with reasonable diligence. In the case before us, the court below took it for granted, that the plaintiff was at all events entitled to recover, if he was hindered by the defendant from prosecuting his settlement in the year 1798. In this I think they erred; for it should have been left to the jury to decide, whether under the facts given in evidence, the plaintiff might not fairly be presumed to have relinquished his settlement.

It has been determined in the circuit court, that a settler cannot support an ejectment without a survey.—Judgment reversed, and *venire de novo* awarded. 2 Binney, 124.

During the progress of this note, two very important acts have passed relative to the lands north and west of the

1784. rivers *Ohio* and *Allegheny* and *Conewango* creek, with which the view of this great controversy will be closed.

The first is entitled "An act to encourage the warranting and patenting of lands north and west of the rivers *Ohio* and *Allegheny* and *Conewango* creek," passed the 1st of March, 1811.

By this act, the secretary of the Land-Office is authorized to issue warrants and patents to all actual settlers, residing north and west of the rivers *Ohio* and *Allegheny* and *Conewango* creek, who have complied with the acts of 1792 and 1794, who may apply within two years after the passing of this act, with such documents as are now required by law to obtain warrants and patents in that part of the state, also a certificate of the deputy-surveyor of the proper district, certifying, that to the best of his knowledge and belief, the lands contained in said survey have not been claimed by any other person, by warrant, or otherwise, and on payment of the usual fees of office, such persons shall receive their warrants and patents, upon executing a mortgage to the governor, for the use of the commonwealth, to secure the payment of the purchase money and interest due, in ten equal annual instalments, and all mortgages executed, in pursuance of this act, shall be for the purchase money and interest only, and shall be filed in the office of the secretary of the Land-Office, and shall be available in law without the recording thereof. And it shall be the duty of the secretary of the Land-Office, before he shall deliver any such patent to be enrolled, to endorse thereon that a mortgage is executed to secure the said payments, specifying the amount thereof. *Provided*, that any person who has, or hereafter may, execute a mortgage to secure the payment of the purchase money on lands for the use of the commonwealth, shall not thereby be deprived of the privilege of a freeholder; and such person may pay the whole amount due at any time within the ten years, and the land may be mortgaged by agent or attorney, duly constituted. But no warrant or patent so issued, to any actual settler, shall prejudice, or in any wise affect, or impair the right, interest, or claim, of any person or persons whomsoever in any of the said lands.

§ 2. All surveys made, or hereafter to be made, agreeably to the 8th section of the act of the 3d of April, 1792, and entered in the survey-book of the proper deputy-surveyor, shall be returned into the Surveyor-General's office, by the deputy, at any time after

passing this act, on application made to him; and the Surveyor-General shall file the same in his office, after which the lands so surveyed and returned, need not be again surveyed, but the secretary of the Land-Office shall issue warrants of acceptance for the same to the person applying to take his title, agreeably to the provisions of the first section of this act.

§ 3. At any time after passing this act, on the application of any of the settlers who may have filed their applications in the Land-Office, the secretary shall issue a certificate to the state treasurer, authorizing him to receive any sum or sums of money, not less than ten dollars, and upon the receipt being returned to the Land-Office, it shall be entered to the credit of the applicant, although he may not have executed a mortgage so as to entitle him to a warrant or patent.

The second is entitled "An act providing for the settlement of certain disputed titles to lands north and west of the rivers *Ohio* and *Allegheny*, and *Conewango* creek," passed 20th of March, 1811.

§ 1. Agreements entered into between warrant holders and actual settlers, previously to the settler taking possession, though after the time required by the act of 3d of April, 1792, in such cases, where such settler has made an actual settlement, continued residence and improvement thereon, as described in the 9th section of said act, are ratified and confirmed; but not to affect adverse claimants.

§ 2. Compromises between adverse actual settlers and warrantees prior to the 1st of June, 1813, by which the warrantee releases to the settler his claim to 150 acres of the tract, including the settler's improvements, or where either party shall purchase the claim of the other to such tract, in such case the title of the commonwealth shall cease, and the title be confirmed to the warrantee and settler accordingly.

§ 3. Where any adverse actual settler has made an improvement and residence agreeable to the act of 3d of April, 1792, and has purchased of the warrantee any part of the tract to secure his improvement, in such case, where the warrantee, on or before the 1st of June, 1813, shall release to such settler, his claim to 150 acres, in such case the commonwealth shall cease to have any further claim to such tract.

§ 4. Any actual settler, who, adverse to the warrantee, had commenced an actual settlement, and residence on any tract surveyed on warrant, and resided thereon two years, and in that time

cleared, fenced and cultivated three acres on such tract, and had abandoned his settlement on such tract, at any time before the settlement, residence and improvements required by the 9th section of the act of 3d of April, 1792, were fully and completely made and ended, and who, by himself, or his legal representative, shall return to such tract before the 1st of June, 1813, and settle and reside on the same so long, as with the residence and improvements aforesaid made thereon, shall amount to what is required by said 9th section, such settler, or his representative, so returning and residing as aforesaid, shall be entitled to all the benefits of an actual settler, under this act, and the act of 3d of April, 1792; but should he neglect to return, or fail to recommence said settlement within said time, and perform the conditions herein required, his previous settlement shall be considered abandoned after said 1st of June, 1813; and after said day, the warrantee, or his legal representative, may dispose of the same, in the same manner, and under the same conditions, as lands where no actual settlement was commenced, and on the same conditions, and under the same exceptions as in other cases, will the commonwealth cease to have any further claim to such tract of land.

§ 5. Every actual adverse settler, who has been evicted by the warrantee, by process of law, shall be entitled to all the benefits of an actual settler under this act, and the act of 3d of April, 1792. And upon the warrantee releasing to such settler, or his legal representative, 150 acres of said tract, including his improvements, clear of expense, or, in cases where either party shall purchase the right or claim of the other to such tract, in such case the commonwealth shall cease to have any further claim to said tract, but the title shall be ratified and confirmed to the said settler and warrantee accordingly.

§ 6. Where no actual settlement and residence now exist, on any tract of land surveyed on warrant; and the warrantee, or his legal representative, shall before the 1st of June, 1814, agree with any person to commence a settlement on such tract before said day, and release to such settler his claim to 150 acres of such tract, clear of expense, and such person, or his legal representative, shall commence an actual settlement on the same before said time, and continue a residence thereon for five years next following the first commencement, and, within that time, clear, fence and cultivate at least two acres for every hundred acres in said

survey, and erect a house thereon, fit for the habitation of man, in such cases the commonwealth shall cease to have any further claim to said tract, and will confirm and ratify the title to the same.

§ 7. Where patents, commonly called prevention patents have issued, to said party, or parties, for said land, and he, she, or they, shall request a new patent for the same land, it shall be granted on payment of the usual fees of office, and on delivering up the old patent to the secretary of the Land-Office, that it may be cancelled.

§ 8. In any case of compromise with an actual settler, and where a new warrant of default shall have been issued for the same tract, the purchase money and office fees for the same, shall be repaid by the state treasurer.

§ 9. The provisions of this act shall not be construed to affect any agreement heretofore made between an actual settler who has made the settlement, residence and improvements on a tract of land, and any person who was to procure the title for said settler, and on which tract of land the original warrantee had failed to fulfil the conditions of the 9th section of the act of 3d of April, 1792, but all such contracts shall remain as heretofore, unless an agreement shall take place between all parties concerned before the 1st of June, 1813, or the original grantee, or his legal representative, shall release his claim to the contracting parties; on which release taking place, the state in all such cases will cease to have any further claim to such land, and the titles shall be ratified and confirmed accordingly.

§ 10. The parties to any compromise, shall cause the evidence thereof to be recorded in the proper county, and a certified copy thereof transmitted to the secretary of the Land-Office shall be evidence of such agreement, and the usual proof of settlement and residence being filed in said Land-Office, patents shall thereupon issue agreeable to the provisions in the foregoing sections.

§ 11. Any civil process issued out of any court, or from any alderman or justice, against the Holland land company, Pennsylvania population company, or the North American land company, or other warrant-holders, by the name of the respective companies or warrant-holders, as the case may require, shall be served on the agent, or attorney in fact of such company, &c. in case where attorneys or agents are or may be appointed; and on due proof of such service, the same proceedings shall be had, as against other defendants, in like cases.

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§ 12. Where an actual settler may heretofore have purchased the right of a warrantee to a tract of land north and west, &c. whereon he may have made an actual settlement agreeably to the act of 3d of April, 1792, and shall apply to patent the same, the secretary of the Land-Office shall grant such patent on the usual proof of settlement being made, and a regular chain of title produced from the warrantee, on payment of arrears and office fees. But nothing contained in the foregoing shall be construed to prevent the commonwealth, at any time hereafter from asserting her right in cases of forfeiture under the act of 3d of April, 1792, when the warrant-holders and actual settlers shall fail to embrace the provisions of this act.

It remains briefly to bring into view the various acts which have been passed on the subject of the public lands of the state, since the act of 3d of April, 1792, and not already noticed.

By an act entitled "An act directing the sale of certain islands in the river Susquehanna," passed 6th of March, 1793, (post. chap. 1619,) upon application made by any person to the Land-Office for a warrant of survey for any island in Susquehanna or its branches, so far as such branches have been declared highways, it was made lawful to issue such warrants on certain conditions and restrictions; but no warrant to issue for any islands surveyed and returned to the late proprietaries, prior to the 4th of July, 1776.

§ 2. Applicants to state any improvements on the islands, the nature of them, and when and by whom made. Improvers to have the preference for two years; after which warrants may issue in favour of the first applier; and warrants issuing otherwise, shall be deemed to have issued by surprise, and be void, and the money paid be forfeited to the commonwealth.

§ 3. Caveats may be entered, and decided by the Board of Property in the usual form.

§ 4. The Board of Property, with the approbation of the Governor, shall ascertain the just value of the islands applied for, whether improved or not, having regard to the soil, wood, and distance from the main land, and the advantages to be derived from the same in regard to fisheries; but the lowest price shall not be less than eight dollars by the acre.

§ 5. No warrant to issue for any island, unless the same is susceptible of cultivation, nor on so the whole purchase money shall be paid to the Receiver-General, nor for any quantity

less than the whole of any such island; and all sandbars and islands, not susceptible of cultivation, and not surveyed and returned into the Surveyor-General's office, for the use of the late proprietaries, prior to the 4th of July, 1776, shall be and remain common highways forever.

§ 6. Patent to be granted in the usual form, on payment of the full purchase money.

§ 7. Existing rights to any islands, not to be affected by this act.

The following case occurred under this act, at a circuit court, at Lancaster, April, 1805, before Yates and Smith, justices, Lessee of George Moore v. John Mundorff. (MSS. Reports.)

Ejectment for a small island in the river Susquehanna.

The plaintiff claimed under an application dated 29th of May, 1794, whereupon an order issued to three persons to view it. They reported on the 17th of November following, that the island was susceptible of cultivation, and valued it at £ 4 per acre.

On the 11th of December, 1794, George Mundorff entered a caveat against the acceptance of Moore's survey, alleging that he had a valuable improvement on the island, and ought to have the right of pre-emption.

On the 8th of June, 1797, Moore made a second application for the island, asserting it to be then improved, and in his possession: And on the 24th of August, 1802, John Mundorff, in behalf of himself, and the other heirs of George Mundorff, entered another caveat, claiming under an improvement made ten years before, for the purpose of tillage, and asserting that he had many years previously improved the same as a shad fishery, and had applied for a grant of the island, at the time of his entry of the first caveat, December 11th, 1794.

On the 13th of December, 1802, the Board of Property decided, that the improvement of George Mundorff being earlier than Moore's, and the former having never relinquished his claim, but filed his caveat in December, 1794, wherein he claimed by virtue of his improvement, which claim being made within the time limited by the act of 6th March, 1793, the caveat of George Mundorff, and the claim of George Moore, were dismissed.

On the same day, John Mundorff entered a formal application for the island on behalf of himself and the other heirs of George Mundorff; but this application was not produced in evidence, till the trial was nearly closed.

The chief value of the island consisted in its being a proper place to

draw the seine for a shad fishery. *Moore*, in 1795, and 1796, with a party, had cleared away some brush on the island, and fished there; he had also a fishery on the eastern shore of the river, opposite to the premises:—But it appeared, that *George Mundorff*, who lived as a tenant on an adjacent island, called *Burkholder's*, about 12 perches distant, had in 1779, and in the succeeding years, done work thereon, by digging down the bank as it washed away, and cutting the brush as it grew up, to fit it for a fishery, and had also cleared out the pool, and fished there occasionally with a company who assisted him in the work, and claimed an interest in the fishery. His cattle were driven in and out of the island by his children. In 1790 he had a small pen inclosed of 10 or 12 yards square, in which he cultivated tobacco, and in the three following years, he raised therein Indian corn, turnips and rye, which he afterwards gathered. It was generally known by the name of *Mundorff's* island.

Teates, J. The right set up to this island on each side, is twofold. Improvement, and application to the Land-Office. As to preparing a pool, and cutting brush to effect a good landing for drawing the seine on an island, it has been objected, that these acts cannot be deemed an improvement, which can confer an equitable interest in the land. The position is correct in general; because the act of 6th March, 1793, "directing the sale of certain islands in the river *Susquehanna*," provides in the 5th section, "that no warrant of survey shall issue for any of the said islands, unless the same is susceptible of cultivation," and therefore the improvements must be made thereon. But the question may at some time be worth considering, whether when the fitness of an island for the landing place of a fishery, constituted its chief value, though a very small part of it may be cultivated, the clearing out a contiguous pool, and removal of the obstructions of brush from the landing, may not be deemed a species of improvement, as it necessarily enhances the value of the soil? We give no opinion on this point, as the case does not need it. If the question shall be determined in the affirmative, then the defendant's claim is several years earlier in point of time than the plaintiff's: If in the negative, they stand on the same footing in this particular, and the plaintiff is bound to shew his superior right, before he can recover; his second application of 1797, calling for his improvement, was misconceived. Old *Mundorff* actually cultivated the soil of the island

by raising tobacco, Indian corn, turnips and rye, thereon, for four successive years, undisturbed by any one; his little patch being surrounded by a rough inclosure; and did occasional acts of ownership thereon. These acts cost labour, though not a great deal.

The only point to be considered here, is, whether the defendant's claim is forfeited, for want of an application to the Land-Office in due time?

The law of 6th of March, 1793, confined the preference to improvers of the *Susquehanna* islands to the term of two years after the passing of the act; after which period the right of pre-emption ceased. This term would have expired on the 6th of March, 1795.

But the act of 23d of September, 1794, (*infra*) which was made five months and thirteen days before the end of the two years, suspended the operation of the former act, as to taking up lands without a settlement and improvement thereon. This suspension was not taken off until the 23d of March, 1802, (*infra*) when an act passed for that purpose, so far as related to the islands in the *Susquehanna*. Add to this last period, five months and thirteen days, and the term of two years is protracted until the 5th of September, 1802, so that if either the first or second caveat would be considered as applications within the true meaning of the first law of March, 1793, they both fall within the term of two years. The first caveat was supposed by the defendant to be tantamount to an application, because he recites it as such in the caveat filed after his father's death. It is true no survey could be made on either of the caveats, nor could a survey have been made on the application without a warrant; but the caveats were assertions of claim, and in my idea were virtually applications for the island; they negative all idea of abandonment, when set up in opposition to an adverse claim, asserting the right to be in the caveators, and persisting in their claim to a right of pre-emption. On this matter however, the court were divided in opinion this forenoon. It now appears, that immediately after the decision of the Board of Property, the defendant formally applied at the Land-Office for the island, in behalf of himself and the other heirs of his father. While the controversy subsisted before the Board, he was stopped from going on to better his title; and as to the plaintiff, he cannot be said to have forfeited his pretensions for want of an application. I therefore think the plaintiff is not entitled to recover.

1784.

Smith, J. I feared before the court adjourned this forenoon, there would have been a difference of opinion on the bench. As to the *caveats*, I decidedly am of opinion, they do not amount to applications within the intention of the act of 6th of March, 1793. But on the production of the defendant's application of 13th of December, 1802, for the island in question, I am clear that the plaintiff is not intitled to recover. Verdict for defendant.

On the 22d of April, 1794, an act was passed (post chap. 1755,) entitled "An act to prevent the receiving any more applications, or issuing any more warrants, except in certain cases, for land within this commonwealth."

It enacts, that, after passing the act, no applications shall be received in the Land-Office, for any unimproved land within that part of this commonwealth, commonly called the new purchase, and the triangular tract upon lake *Erie*.

§ 2. No warrant shall issue after the 15th of June, (1794,) for any land within that part of this commonwealth, commonly called the new purchase, and the triangular tract upon lake *Erie*, except in favour of persons claiming the same by virtue of some settlement and improvement made thereon; and that all applications for lands that may remain on the files of the Land-Office after the said 15th of June, and for which the purchase money shall not have been paid on that day, shall be null and void; provided that applications may be received, and warrants may issue, until the 1st of January, 1795, in favour of any person or persons to whom any balance or balances may be due in the Land-Office, on unsatisfied warrants issued before the 29th of March, 1792, for such quantity of land respectively as may be sufficient to discharge such balance, or balances; provided, that nothing in this act shall be so construed, as that warrants, except those wherein the land is particularly described, shall in any manner affect the title of the claim of any person having made an actual improvement before such warrant is entered and surveyed in the deputy-surveyor's books.

By a supplement to this act, passed 22d of September, 1794, (post. chap. 1773,) it is enacted, that from and after the passage of said supplement, no applications shall be received at the Land-Office, for any lands within this commonwealth, except for such lands whereon a settlement has been, or hereafter shall be made, grain raised, and a person or persons residing thereon.

§ 2. All applications made since 1st

of April, 1784, on the files or books of the Land-Office, for lands within this commonwealth, for which the purchase money has not been paid, shall, from the passing of this supplement, be null and void; provided, that all persons shall have the benefits of the act passed March 29th, 1792, entitled "An act to authorize the receiver general, to carry monies received into that office since a given period, for lands sold, and which have not been, nor shall be secured to the purchasers, or to the credit of such purchasers, or their assigns, in payments already due, and hereafter to become due to the commonwealth, for the purchase of any lands within the same," agreeably to the provisions contained in a supplement to said act, passed March 6th, 1793, (ante. page 202-3.) *Provided also*, that nothing herein contained shall be construed to abridge the time for patenting of lands, or in any wise injure the rights of those persons who now hold, or hereafter shall hold lands by virtue of actual settlements made or to be made, under the law of 3d of April, 1792.

By an act passed 23d of March, 1802, (post chap. 2251,) so much of the above supplement, as prevents or bars the issuing any warrants under the direction of the act for the sale of certain islands in the river *Susquehanna*, is repealed.

The only decided cases which bear upon the foregoing acts, are so connected with laws passed upon another subject, that it is now necessary to bring them into view in this place.

By an act passed 28th of March, 1787, entitled "An act for ascertaining and confirming to certain persons called Connecticut claimants, the lands by them claimed within the county of Luzerne, and for other purposes therein mentioned" (Chap. 1274.) Provision was made for ascertaining and confirming the titles of the Connecticut claimants, and for allowing the Pennsylvania claimants an equivalent, at their option, in the old or new purchase. The 9th section of that act, is as follows: "And whereas the late proprietaries, and divers other persons have heretofore acquired titles to parcels of the lands aforesaid, agreeably to the laws and usages of Pennsylvania, and who will be deprived thereof by the operation of this act, and as justice requires that compensation be made for the lands of which they shall thus be divested; and as the state is possessed of other lands, in which an equivalent may be rendered to the claimants under Pennsylvania, and as it

will be necessary that their claims should be ascertained, by a proper examination. Be it enacted, &c. that all persons having such claims to lands which will be affected by the operation of this act, shall be, and they are hereby required, by themselves, guardians, or other lawful agents, within 12 months from the passing of this act, to present the same to the Board of Property, therein clearly describing those lands, and stating the grounds of their claims, and also adducing the proper proofs, not only of their titles, but of the situations, qualities, and values of the lands so claimed, to enable the Board to judge of the validity of their claims, and of the quantities of vacant lands proper to be granted as equivalents. And for every claim which shall be admitted by said Board, as duly supported, the equivalent by them allowed, may be taken either in the old, or new purchase, at the option of the claimant; and warrants and patents, and all other acts of the public offices relating thereto, shall be performed free of expense. The said Board shall also allow such a quantity of vacant land, to be added to such equivalent, as shall in their judgment be equal to the expenses, which must necessarily be incurred in locating and surveying the same. And that the Board of Property may in every case obtain satisfactory evidence of the quality and value of the land, which shall be claimed as aforesaid, under the proprietary title, they may require the commissioners aforesaid, during their sitting in the said county of Luzerne, to make the necessary inquiries, by the oaths or affirmations of lawful witnesses, to ascertain those points; and it shall be the duty of the said commissioners to enquire and report accordingly."

This act was suspended by an act passed March 29th, 1788, (chap. 1338,) and repealed 1st of April, 1790, (chap. 1414.) In *Vanhome's lessee v. Dorrance*, in the circuit court of the United States, the confirming act was declared to have been unconstitutional and void. 2 Dallas, 304.

Under these circumstances, an act was passed the 9th of March, 1796, (chap. 1866,) entitled "An act to compensate David Meade, and others." Which after reciting, that *David Meade*, and sundry other persons, embraced the provisions of the act of 28th of March, 1787, and performed on their part, all the requisites necessary to their obtaining the benefits of the said law, by attending the state commissioners at *Wyoming*, and procuring their

report upon their respective lands, which were lodged with the Board of Property to be acted upon; and it was but just, that the persons complying with the said law, while it was in existence, should be entitled to the benefit of the same; it was enacted, that it shall and may be lawful for the Board of Property, and they are enjoined and required to proceed upon the reports of the commissioners appointed by the act of 28th of March, 1787, which have been filed in the office of the secretary, and ascertain, as nearly as they can, from the documents so placed in the secretary's office, and from such further evidence as they may deem necessary, and which shall be produced to them, what sum or sums ought, on the principles of the aforesaid law, to be allowed to the respective owners, and the Receiver-General shall thereupon deliver a certificate of such sum or sums to the respective owners, and enter a credit in his books for the same, which may be transferred to any person, and passed as credit, *either in taking out new warrants in any part of the state, where vacant land may be found, or paying arrearages on former grants; Provided nevertheless*, that the value of the land, for which such certificates are so to be delivered to the aforesaid claimants, shall not be estimated otherwise, than if the same had been made by the Board of Property immediately after the report of the said commissioners, in pursuance of the said before mentioned law; and the claimants to release their respective claims for which they shall receive compensation.

Lessee of David Meade v. Frederick Haymaker and Luke Stephens, Allegheny, October, 1800, before Yeates and Smith, justices, (MSS. Reports.)

Ejectment for one messuage and 400 acres of land, surveyed on a warrant for *Henry Meade*. The plaintiff claimed under a warrant to *H. M.* dated 17th of March, 1796, for four hundred acres, north, &c. between the outlet of *Little Coneant* lake, and *Sandy creek*, granted in pursuance of the acts of assembly, passed on the 3d of April, 1792, and 9th of March, 1796.

The warrant was entered with the deputy surveyor of the district on the 28th of May, 1796, and a survey was made thereupon (and seven other warrants) of 401 acres 150 perches by *W. Power* on the 15th of August, 1796, who, on the 17th of the same month, received his surveying fees, 70 dollars.

A certificate of the Receiver-General was also shewn in evidence, dated 7th of October, 1800, that the warrant granted to *H. Meade*, with 18 other war-

1784. warrants, was paid by certificate No. 1. issued to the lessor of the plaintiff, agreeably to the act of 9th of March, 1796.

It appeared in evidence, that a survey, corresponding in every particular with that claimed by the plaintiff, had been made for the defendant *Haymaker*, under, and in pursuance of his improvement dated 2d October, 1794. This survey was said to have been made on the 5th of June, 1795, and was returned into the Surveyor-General's office on the 16th of January, 1798, with a note subjoined thereto, that "*David Meade* claims this survey under his warrant." *Haymaker* lived both before and since 1795, in *Cussewago*, at a distance from these lands. No proof whatever was given, of his having at any time made any improvement on these lands.

Stevens, the other defendant, had a family on the west branch of *Susquehanna*, under the care of one *Jesse Glancey*, his step son. He took lodgings in *Cussewago*, and afterwards settled and improved a farm about two and an half miles distant from these lands, and which he now holds as an actual settler. *Stevens*, to make some compensation to *Glancey*, began a small improvement for him on the lands in question. On the 23d of May, 1796, he found a cabin erected on the ground, 14 feet square, not covered in; he dressed it for covering, sprouted 30 or 40 stumps, deadened about half an acre, and slept there that night, next morning he cut a tree for clap-boards, cut a door in the cabin, and went in quest of provisions. He came back on the 25th of May, split the clap-boards, covered in the cabin, and slept again there. On the succeeding day he returned to *Cussewago*; and on the 2d of June, he worked three days on the lands in controversy, clearing about half an acre, by grubbing, topping, heaping and burning brush wood, and slept there during that period. In the month following he again worked on the land, and cut logs, poles and brush, in order to sow rye, and planted two quarts of potatoes. *Jesse Glancey* crossed the *Ohio*, in the latter end of May, 1797; entered into an agreement with *Haymaker*, and now cultivates the land.

For defendants, it was contended, that the plaintiff's warrant was not authorized by the acts of 3d of April, 1792, or 9th of March, 1796, or any other law. Running warrants are not recognized by the act of 3d of April, 1792. They cannot operate as notice according to the words of the 4th section, "in order that all persons who may apply for lands, may be duly in-

formed thereof." The 3d section directs, "that every application shall contain a particular description of the lands applied for." But this is not the case as to the present warrant, which calls for no specific spot, but generally for lands between the outlet of little *Coneaut* lake, and Sandy creek. The intermediate space between them is a large tract of country. The act of 9th of March, 1796, "to compensate *David Meade* and others," makes no alteration herein, but puts them on the same footing with other citizens! It barely gives them credit for the sums found due to them, either in taking out new warrants, or paying arrearages on former grants; and they must necessarily be considered as subjected to every other regulation, term and condition imposed by existing laws. The warrant on the face of it, expresses no condition of improvement, building a house, or residence for five years. The survey also, under which the plaintiff claims has never been returned into the Surveyor-General's office, as the law requires. It is a mere transcript of the survey made for *Haymaker* on the 5th of June, 1795, and it is highly probable that it was not made by the deputy-surveyor's going on the ground, after the issuing of the warrant. This is peremptorily required by the act of 8th of April, 1785, and by the 9th section thereof, "every survey theretofore made is accounted clandestine, void, and of no effect whatever." It is not made voidable, but, *ipso facto*, a nullity.

Another ground of defence presents itself, under the act of 22d of April, 1794, no warrant shall issue after the 15th June then next for any lands in the new purchase, except in favour of persons claiming the same by virtue of some settlement and improvement. This law is not to be defeated by implication; and considering its provisions as subsisting, it is evident that the lessor of the plaintiff should have made a settlement and improvement, before his warrant could regularly and legally issue.

Besides, the last clause in the act provides, "that no warrants, except those wherein the land is particularly described, shall affect the title, or claim of any person, having made an actual improvement, before such warrant is entered and surveyed in the deputy-surveyor's books." The word "settlement," is omitted. Admitting that none but actual settlements are protected by the act of 3d of April, 1792, still as to warrants issued and located after the 15th of June, 1794, they shall not take place of mere improvements. It cannot be denied, that if the plaintiff's

warrant is legal, and describes no certain place, and *Stevens* had begun an improvement for *Glancey*, his step son, who may be considered as one of his family, and had slept at least five nights on the land, consequently the plaintiff is not intitled to recover.

By the Court. Several exceptions, plausible in themselves, having been taken against the plaintiff's right, it becomes the duty of the court to examine them minutely. The public are materially interested in the establishment of certain principles regulating the titles of landed property; on the correct application of those principles to the different cases which may occur, the peace and safety of society must depend.

The act of 9th of March, 1796, "to compensate *David Meade* and others" was grounded on their conformity to the provisions of the law passed on the 28th of March, 1787. "They had performed on their part, all the requisites necessary to their obtaining the benefits of the said law, and it was but just, that the persons complying with the terms of the law aforesaid, while the law was in existence, should be intitled to the benefits of the same." By the 9th section of the former law, the claimants under *Pennsylvania* rights were to be allowed an equivalent for their claims, either in the old or new purchase, at their option; and, "warrants and patents, and all other acts of the public offices relating thereto, were to be performed free of expense." Possessed of these meretorious claims, they are allowed by the law of 9th of March, 1796, to have a credit in the books of the Receiver-General, for the sums justly found due to them, "either in taking out new warrants, in any part of the state, where vacant land might be found, or paying arrearages on former grants." To effectuate the declared intentions of the legislature, and preserve the stipulated public faith inviolate, these persons must necessarily be intitled to new warrants, notwithstanding the general expressions, in the former acts of 22d of April, 1794, or its supplement of 22d of September, 1794, where the lands were not previously improved. No certificates of judges, or justices, were necessary in the case of other citizens applying for warrants for lands north and west of the rivers *Ohio* and *Allegheny*, and *Conewango* creek, and therefore were not to be exacted from this class of public creditors; but every condition of improvement, building a house, and five years residence, and every other regulation, were equally binding on them as others.

But it has been objected, that the warrant of *Henry Meade* is indescriptive of any particular place, and wants precision. It is answered, that it is reduced to certainty by the survey. The effect of the loose wording thereof, might have been, that if a subsequent warrant had come to the hands of the deputy-surveyor, specially describing a particular spot between the outlet of little *Coneaut* lake and *Sandy* creek, before a survey had been made on this indeterminate warrant, it would have been postponed thereby. As to the survey not having been returned, it was the fault of the district surveyor, who had received his legal fees, and shall not prejudice the party, in any other case than that of a *shifted* application or warrant. Such have been our uniform decisions. Every presumption is in favour of a draft of survey, duly certified by the proper officer. It is powerful evidence that a survey was fairly, regularly, and legally made, unless it be rebutted by other proof. The security of landed titles rests greatly on this rule, and it would be dangerous in the extreme to shake it. No testimony has been adduced to shew that the survey was not made by the deputy-surveyor going on the ground, and therefore the presumption stands in its favour.

Much reliance has been placed on the last clause of the law of 22d of April, 1794. It is certainly penned very incorrectly. It might at first be supposed to imply, that warrants particularly descriptive might affect the equitable claims of *previous bona fide improvers* of the same lands; but it will scarcely be contended, that this could have been the real intention of the legislature, considering the different expressions of the public will in a variety of acts, since the revolution. In the preceding part of the section, the words *settlement and improvement*, seem ranked as synonymous expressions, though the latter word only is inserted in the close of the law. In fact, an improvement, as defined by the act of 30th of December, 1786, has the same meaning as an actual settlement under the act of 3d of April, 1792, except that the latter points out precisely the extent of it, by clearing two acres for each 100, erecting a messuage, and residing thereon five years. The former law describes an improvement "as an actual personal resident settlement, with a manifest intention of making it a place of abode, and continued from time to time, &c." We are however of opinion, that if a doubt could be supposed to arise under the expressions of the act of the 22d of April, 1794, they are removed by the

1784. supplement thereto, passed at the next sessions, on the 22d of September, which, in several instances, alters and supersedes the provisions of the first act, and secures *settlements* and *improvements* made under the law passed 3d of April, 1792.

How then stand the pretensions of either of the defendants? Though *Haymaker* had a survey made for him, he had no settlement whereon to ground it; and therefore it is a mere nullity, and gives no right whatever.—*Stevens* began to make what is styled an improvement, three days before the plaintiff's warrant was entered with the district surveyor, but he had an actual settlement two and an half miles distant, whereon he resided, and which he now holds as an actual settler. He could not have two resident settlements, two *homes* at the same moment. If he could secure the title of more than one place by actual settlement, wealthy men might do the same thing to any extent, and the poor would be thus prevented from all means of obtaining land, which could never have been intended.

Glancy can derive no claim under either *Haymaker* or *Stevens*. He himself did not cross the *Ohio*, until the latter end of 1797, more than nine months after the survey.

On the whole, therefore, the result is, that the plaintiff has the only right recognized by the law, and we are clearly of opinion he is entitled to recover. Verdict for the plaintiff.

In the Lessee of *John Willins*, jun. v. *John Attenion*, at *Allegheny*, November, 1801, before the same judges, (MSS. Reports,) the plaintiff claimed under a warrant in his own name for 400 acres of land, north and west, &c. on French creek, adjoining a survey made for one *Baron*, and including the claim formerly of *John Wentworth*, agreeably to the acts of assembly of 3d of April, 1792, and of the 9th of March, 1796, dated 18th of March, 1796, reciting that he was desirous to settle and improve the said four hundred acres. A survey of 575 acres, 102 perches, was made by *J. Power*, on the 20th of Sept'r, 1797, it being the same tract which was surveyed to *John Wentworth*, on the 27th of March, 1794, on his improvement, dated 3d of April, 1792. A patent issued thereon, dated 17th of July, 1801, to *Willins*, which was admitted by the defendant's counsel to be read, though the demise was laid the 1st of Feb'y, 1799, and the ejectment brought to June term, 1800.

The defendant's counsel moved for a nonsuit. The terms of actual settlement prescribed by the 9th section of

the act of 3d of April, 1792, are not shewn by the plaintiff to have been complied with. The patent since the ejectment brought cannot dispense with the conditions originally imposed, nor have any effect. It was founded on mistake and misapprehension of the law, and is therefore void. 1 Black. Com. 348. It was decided by the justices of this court here in October, 1800, between *Meade's* lessee and *Haymaker*, that the conditions of actual settlement and residence are equally obligatory under the warrants obtained by *Meade*, as under others. Though the plaintiff claims under a credit given to *David Meade* by the act of 9th March, 1796; yet that law only removed the impediment as to his warrants, created by the acts of 22d of April and 22d of Sept'r, 1794, and operated as a virtual repeal of those acts, as to the necessity of previous improvements to such warrants. On the 14th of March, 1796, the Board of Property estimated the lands of *Meade* at £.13½, and by the act of the 9th of the same month, he obtained a credit for the same in the books of the Receiver-General, which might be transferred to any person, and passed as credit, either in taking out new warrants in any part of the state, where vacant land might be found, or paying arrearages of former grants. The law passed the house of representatives, obliging him to pay £.30 per hundred acres, according to the provisions of the 6th section of the act of 21st Dec'r, 1784, for such new warrants as he should obtain: but it received considerable amendments in the senate on the 27th of Feb'y and 5th of March, 1796, and was finally modified and enacted as we find it in our statute book. It will not be pretended, that if he had received his money, he could have further claims against the state; and the legislature could not mean, that the sum passed to his credit, should be more valuable than the same sum in cash, in the hands of other persons; or that *Meade*, and those claiming under him, should experience the benefit of the diminution of price in the lands, and not be subjected to the terms of actual settlement, equally with other citizens. The rate of lands across the rivers *Ohio* and *Allegheny* was lessened, to enable the holders of them to make efficient settlements; and this was the great object contemplated in the law of 3d of April, 1792. It was calculated as a complete system of settlement, which would of itself be carried into execution. The words of the 9th section are, "In defect of such actual settlement and residence, it shall and may be lawful to and for this commonwealth,

to issue new warrants to other *actual settlers*, for the said lands, &c." and of the 10th section, that on the *actual settler* making default, the commonwealth may grant the same lands, or any part thereof, to *others* by warrants. The variation of phraseology as to the two classes of land holders was certainly intentional. Other *actual settlers* mean persons really on the lands, and the expressions can convey no other idea. The entry of such settlers, therefore, on such lands, whereon default has been made, is congeable; the will of the community is supreme, and has so directed it. Warrant holders cannot pretend that they have more equity than *actual settlers*: If the latter abandon their settlements, their farms are open to new applications; why should it not be so also in the cases of the former? a base or qualified fee must be determined, whenever the qualification annexed to it is at an end. 2 Black. Com. 109. There is a distinction between a *condition* in deed, and a *limitation*. When the estate is so expressly confined by the words of its creation, that it cannot endure for any longer time than till the contingency happens, upon which the estate is to fail, this is a limitation; and the estate may be defeated thereby, without any entry or claim to avoid it. 1b. 155. The estate here, is at the utmost a chattel interest, which terminated on the default of the warrantee. 1b. 156. The warrant is dated in March, 1796, and no settlement has been shewn under it before the ejectment was brought to June, 1800, more than four years, though it should have been made in two years. On a condition *precedent*, the party has no estate until the condition be performed, even if the condition has become impossible. 1b. 157. 2 Dallas, 317. Co. Lit. 206, b. On a limitation, the estate determines *ipso facto*, without entry. Co. Lit. 214, b.

Moreover the argument *ab inconvenienti* applies forcibly in the present instance. Unless *actual settlers* are encouraged to seat themselves on the lands of defaulting warrantees, the intentions of the legislature as to forming settlements by way of barriers to the frontiers will be defeated.

The plaintiff's counsel observed, that they had it in their power to prove a settlement under the law, but deemed it unnecessary. The plaintiff was entitled to a transferred credit under *David Meade*; it was resolved in his ejectment against *Haymaker*, that he might take out a warrant without any previous improvement, a term binding on other citizens. Was he not then confessedly in a better plight than others

with their cash in hand? The act of 28th of March, 1787, grants an equivalent to the *Pennsylvania* claimants either in the old or new purchase at their option; and warrants and patents, and all other acts of the public offices were to be performed *free of expense*. In these particulars also, they were put in a better situation than others applying for lands. We know nothing of the original bill in the lower house, or of the amendments thereto in the senate, which have been mentioned, and which afterwards were enacted into a law on the 9th of March, 1796. The court have not the journals of either house before them whereon they can judge; but this we do know, in the language of the same act, that the *Pennsylvania* claimants "had performed on their part all the requisites necessary to their obtaining the benefits of the said law; and it was but just that the persons complying with the terms of the law while it was in existence, should be entitled to the benefits of the same." The legislature had made a solemn engagement with the persons who had thus surrendered their pretensions for the public peace; and the community were bound by their acts as moral agents. We likewise find that grants were made to the *Washington* and *Pittsburg* academies, exempted from settlement. Why should not *Meade* and those claiming under him, have the same indulgence?

The sentiments of the court on the subject of settlement on *Meade's* rights were delivered *obiter* in the case of *Haymaker*: the point was not argued, nor was the question directly before the court, and is therefore open to discussion. If the two laws of 1794, had not passed, *Meade* might have obtained vacant lands any where within the state. What we insist on, is, that the law of 9th of March, 1796, was meant as an honest fulfilment of the public plighted faith by the act of 28th of March, 1787, unfettered by the terms of settlement, or any other conditions whatever, unknown at that time.

But it has been said, moreover, that the warrantee never had more than a chattel interest, and right of entry in these lands, though he has paid the full consideration to the state. And it is assumed as a ground of argument, that the estate, such as it was, determined, *ipso facto*, by its limitation.—This is denied, not only on the express words of the law, which prescribes a certain mode of issuing new warrants, vacating the original warrants, but on the authority of the decision of this court, in *Morris's lessee v. Neighman* and *Sheiner*, in May, 1799. The warrantee by pay-

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ment of his money and receiving possession of the land, obtains an estate on certain conditions; and to take advantage of a condition broken, there must be an actual entry, a stranger cannot enter, but only the grantor or his heirs.

It has also been objected, that there is a difference of expression in the 9th and 10th sections of the act of 3d of April, 1792, as to vacating the interests of warrantees and actual settlers. It will be clearly found, that the former section equally respects both, where defaults have been made as to settlements; and that the latter section is merely confined to the instances of actual settlers not taking out their warrants within ten years after passing the act. Admit an entire equality of equity, between the two classes of land holders, though the warrantees have paid their money into the coffers of the state; why, in the reason and nature of things, should entries on the land, without authority, be allowed in the case of warrantees, and not as to the settlers? The advocates of the pretensions of the latter, will not contend, that in default of the full, complete settlement and residence pointed out by the law, one actual settler may dispossess another of his farm, on pretence of the interest of the latter being determined by its limitation; and that the entry of the latter is congeable! Such a doctrine would produce infinite disorder and confusion. If inconveniences are to be regarded in the exposition of the law, it will certainly be necessary to adopt the rule, that some public authority should determine between the contending parties; that they should not be permitted to judge and decide on their individual claims, and carve out their several remedies at their will and pleasure. No one can doubt that the peace and welfare of the community are intimately interested herein.

By the Court. We expressed our opinions incidentally in *Meade's lessee v. Haymaker*, that actual settlements were requisite, in the case of warrants issued under the act of March, 1796. The present question was not immediately before the court, but the case naturally led to it. We mean not, however, now to give any decided opinion on that point, as we are not possessed of the minutes of the house of representatives, or of the senate, which have been referred to in the argument.

Admitting that the conditions of actual settlement are obligatory on the warrants issued under that act to *David Meade*, and others claiming a credit under him, it is contended, that by the

words of the 9th section of the act of 3d of April, 1792, in default of settlement and residence, the commonwealth may issue new warrants to other *actual settlers* for the said lands, &c. and that these expressions imply a right to settle on such lands whereon default has been made, previous to such new warrants having been issued. But will not the intention of the legislature be better fulfilled, and all the words of the clause receive their full operation, by construing *actual settlers*, to mean other persons who are desirous to settle and improve the lands? If they must of necessity be construed to mean persons then cultivating the land, then none but such characters would be intitled to vacating warrants, in exclusion of the rest of mankind, however desirous and ready to make settlements. Besides, if we regard the grammatical construction, and adopt the sense insisted on by the defendant's counsel, then those words must be taken as referring to such *actual residence* and settlement, mentioned two lines before, comprehending fencing, clearing, cultivating, &c. erecting the messuage, &c. and residing thereon five years. Neither of these constructions, it is presumed, will be contended for; the first opposes every ground of that just equality, which ought to prevail amongst the citizens of a free government; the last is *felo de se* of the object endeavoured to be accomplished, and is moreover repugnant to the subsequent words, and so often as defaults shall be made for the time, and in the manner aforesaid, &c. which presuppose defaults in new grants. The framers of the law wisely intended, in order to guard against confusion, disorder and uncertainty, that the constituted public authorities of the state, by the medium of the Land-Office, should determine respecting the defaults alleged to have been committed by the first warrantees. The opinion delivered by this court in *Morris's lessee v. Neighman and Sheiner*, was consonant thereto, and was delivered in direct terms, that no individuals could take advantage of the breach of the condition, unless through the instrumentality of the commonwealth's officers, by granting new warrants in a specified form. This was likewise recognized by the majority of the judges in the late contested case of the *mandamus* between the *Holland land company* and *Tench Cox*, the secretary of the Land-Office. We see no reason at present to recede from the opinion which we have deliberately formed; but are still open to conviction. We feel and know, that the point requires to be finally settled, and that the

peace and safety of the country are involved in an early and mature decision. We therefore invite the defendant's counsel to take a bill of exceptions, move for a new trial, or to consider the question as a point reserved for further discussion. In the mean while, the motion for a nonsuit is denied.

The defendant's counsel then offered to shew in evidence, that *William Gregg* and *John Gregg*, two brothers, seated themselves down on French creek, in this quarter of the country in the year 1789. They continued there that summer, and each designated for himself a tract of land, supposed to contain 400 acres; *William's* claim was up French creek, and *John's* below it. A small cabin was built on *William's* tract, wherein they resided. They then returned into the inhabited parts of the country, and came back in the spring of 1790, built a larger house on *John's* tract, and raised 100 bushels of corn, and 500 bushels of potatoes on the lands that summer: *John Gregg* returned to *Susquehanna* that fall, but his brother *William* continued to reside in the larger cabin, that fall, and the ensuing winter; and was killed by the Indians, on the lands, in the spring of 1791. The defendant afterwards intermarried with the widow of *William Gregg*, and holds the lands in controversy in his right, and under *William M^cAdams*, the guardian of her minor children.

This evidence was opposed by the plaintiff's counsel, on the ground of its not proving a settlement recognized by the law. By section sixth, of the law of 12th of March, 1783, no improvement, office right, or claim, under any Indian nation, or the late proprietaries, within the lands appropriated for the redemption of the depreciation certificates, or donations to the officers and soldiers in the continental army, shall be valid, but the same shall be null and void to all intents and purposes whatsoever. Ante. page 64. By the second section of the act of 1st of April, 1784, (ante. page 102) the Land-Office which was shut in 1776, was first opened from the 1st of July, 1784, for obtaining new rights to lands already purchased from the Indians; and the 8th section (ante. page 104) excepts the depreciation and donation lands. The same exception is again made by the act of 21st of December, 1784. (post chapter 1111, § 6.) The law of the 3d of April, 1792, first gave a right of settlement to these lands. The words of the second section are, 'he lands north and west of the rivers *Ohio* and *Allegheny* and *Conewango* creek, are hereby offered for sale to persons who will cultivate, improve, and settle the same; and the 5th section, which directs, that the deputy-surveyor shall not survey the lands on warrants, that may have been

actually settled and improved prior to the date of the entry of such warrant with the deputy-surveyor of the district, except for the owner of such settlement and improvement, can only mean lands settled and improved after passing of the act.

By the Court. The present case interests our feelings; but we must endeavour to find out the true meaning of the law, and adhere to it firmly. The grammatical construction of the act is clear, and puts all the people of the country on an equal footing. The words of the act are in the future tense; and the preamble of the act offering encouragement to actual settlers, must naturally refer to those who shall settle, and not to those who had theretofore settled. We are bound by the expressions; and, our uniform decisions have been, that proofs of settlement under this law, should be confined to settlements made after it was passed. But if the defendant's counsel are dissatisfied with this opinion, we again invite them to put it in a train to go before another tribunal.

It was then agreed that a verdict should pass for the plaintiff. And when the verdict was pronounced, the plaintiff agreed to convey one moiety of the lands in question, to the minor children of the said *William Gregg*.

Again: On the 19th of February, 1801, an act was passed, (chapter 2174,) entitled, "An act for the relief of *Peter Wikoff*, *Jonathan Bayard Smith*, and others," which recited that these gentlemen and others had received patents from the commonwealth, for certain tracts of land, in pursuance of surveys made before the north line of the state was ascertained; and that these lands had fallen within the state of *New-York*: it therefore enacted, that on their application, the Board of Property should ascertain the amount of payment made by them for such lands, and should certify the same to the Receiver-General, who was thereupon to deliver certificates to them, with interest from the time of payment, and enter a credit, in his book for the same, which might be transferred to any person and passed as credit, either in taking out new warrants in any part of the state, where land may be found, or in payment of arrears of former grants. Certificates were accordingly issued; and on the 6th of September, 1804, new warrants were taken out, and executed upon lands in *M^cKeay* county; which warrants had been regularly transferred to *Jonathan Smith*. The surveys were returned and accepted; but at the time the warrants were executed, and up to the present time, no settlement had been made nor grain raised, nor did any person reside, on the lands on which they were laid; and therefore the officers of the Land-Office refused to grant patents.

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This gave rise to the case of the *commonwealth v. Cochran*, in the supreme court, 2 Binney, 270, which was a motion for a rule upon the defendant, the secretary of the Land-Office, to shew cause why a *mandamus* should not be awarded, commanding him to prepare and deliver patents to *Jonathan Smith*, for the lands so warranted and surveyed.

The objection made by the Attorney-General was principally grounded on the act of 22d of April, 1794, by which the Land-Office was prohibited from issuing warrants for lands within the *new purchase*, where these lands lay, "except in favour of persons claiming the same by virtue of some settlement and improvement being made thereon." And the supplement to that act, passed 22d of September, 1794, by which the office was prohibited from receiving applications for any lands within the commonwealth, except for such lands whereon a settlement had been, or should be thereafter made, grain raised, and a person or persons residing thereon. And as the warrants in this case were laid upon unsettled lands, they came precisely within the interdiction of those laws, and were not intitled to confirmation by patent. That the law of 1801, was passed while the interdiction was in full force; and unless it operated as a repeal in a certain degree of the laws of 1794, there was no ground for the motion; and it was pressed that it did not operate as such repeal.

Tilghman, C. J. delivered the opinion of the court. The objection to the patents is founded on the acts of 1794. These acts forbade the issuing of warrants, or receiving applications for lands on which no settlement and improvement had been made; and it is contended, that as the warrants in question were laid on unsettled lands, their execution was illegal, and ought not to be confirmed by patents. It appears to us, that this objection is not well founded. Upon a fair construction of the act of 19th of February, 1801, the persons in whose favour that law was made, had a right to take out warrants for their own use for vacant lands in any part of the state; and they were to pay the price, and comply with all the conditions imposed on the purchasers of land in that part of the state, where the lands lay. If they lay west of the *Allegheny* river, they would have to comply with the terms of settlement and improvement required by law to complete a title in that quarter; but, if east of that river, nothing but the usual price in money was required. To give the act of 19th of February, 1801,

any other construction, would be to deprive the persons intended to be compensated, of a very material benefit; I mean the benefit of taking out warrants for themselves. They would have been obliged to sell their warrants to settlers, which would have very much reduced their value, or to speak more properly, they might have transferred to settlers their credit on the books of the Receiver-General; but would have had no right to take out warrants themselves, unless they either purchased the right of settlers, or seated themselves on the land intended to be taken up. This never could have been the intent of an act, by which it was designed to make a liberal compensation to persons who had paid money to the state through a mistake of its own officers. The compensation was liberal, because it included interest to the time of issuing the certificates. No interest was allowed on those certificates, because it was supposed that the holders might immediately use them as cash, by taking out new warrants. The opinion of this court is, that the act of 19th of February, 1801, operated as a repeal of all former acts, requiring a settlement *previous* to the issuing of a warrant, so far as concerned warrants to be issued in favour of those persons who obtained credit in the books of the Receiver-General in the manner above mentioned. They therefore allow the motion. Rule granted.

It is necessary, however, further to notice, that by an act passed 1st of April, 1805, entitled "An act for the speedy redemption of certain certificates therein mentioned," (chap. 2587,) it is enacted that it shall be optional with the holders of certain certificates, usually called "Wyoming credits," issued under "an act to compensate *David Meade*, and others," passed 9th of March, 1796, as also the holders of those issued under an act, entitled "An act for the relief of *Peter Wikoff*, &c.," passed 19th of February, 1801, to receive from the treasury the amount of said certificates, or any of them, or to apply them in taking out warrants for lands, or in discharge of arrearages on former grants; and the warrantee who may pay the purchase money in certificates of either description, shall be as liable to the payment of fees, and the conditions of settlement and cultivation, as is or may be required of those who pay the purchase money in specie; and no credit shall hereafter be allowed to any person paying for lands with the credits aforesaid, on account of expences incurred in surveying or locating any

lands; any custom or usage to the contrary notwithstanding.

The fees of the Land-Officers were fixed by an act passed April 20th, 1795, (chapter 1852.) But so much of that act as related to the fees of the Surveyor-General, was repealed, and his fees regulated by an act passed 8th of April, 1799, (chapter 2053.) And on the 29th of March, 1803, an act was passed (chapter 2359) entitled An act authorizing the secretary of the Land-Office, and the Attorney-General, to recover the fees due on warrants and patents remaining in the Land-Office: See the acts of 29th of March, 1809, 4th of April, 1809, and 25th of December, 1809, *infra*.

By an act passed 22d of January, 1802, (chapter 2213,) no caveat or note on survey then on record, or otherwise, either in the office of the Secretary, or in the office of the Surveyor-General, shall continue to bar the issuing of a patent, or patents, to those, or their legal representatives, against whom the same has been entered, during a longer term than two years from passing the act, unless the person entering the caveat, or others holding or claiming the estate, shall within the said term of two years, take out a citation, and prosecute the same to effect.

§ 2. No caveat, note on survey, or writing in nature of a caveat, hereafter to be entered shall continue to bar the issuing of a patent, during a longer period than two years from the entry of such caveat, unless the party interested shall within that term, take out a citation thereon, in order to bring such dispute to a decision, and prosecute the same to effect.

On the 2d of April, 1804, (chapter 2497,) an important act was passed, which was liberally intended to afford an opportunity for purifying many titles from defects arising from frauds committed on the Land-Office. The preamble recites that many persons who held lands under proprietary warrants or locations, have, in order to obtain patents for the same at reduced prices, procured new warrants from the state, on which, in most cases patents have issued, thereby endeavouring to avoid the payment of part of the principal and interest due on their original contracts, and at the same time rendering the titles of those who are purchasers under the minsecure; and it enacts, that on the application of any person holding a warrant for lands within this commonwealth under the authority of the same, on which surveys have been made, or patents issued, and who are also in possession of the title to the same land, or any part thereof, by virtue of a proprietary warrant or location, and who are now desirous of doing justice to the state by patenting their said lands on their old proprietary warrants or locations, the Board

of Property shall have power to direct the Receiver-General, on settlement of their said accounts on the said proprietary warrants or locations, to carry to their credit the amount of purchase money and interest paid by them, or those under whom they claim, on their said new warrants.

This act was to continue in force for three years, and to the end of the next session of the legislature. By the 3d section of an act passed 26th March, 1808, (chapter 2971,) this act is continued in force until the 1st of September, 1809.

By an act passed 4th of April, 1809. The act of 2d of April, 1804, is further continued until the 1st day of April, 1812.

On the 4th of April, 1805, (chapter 2605,) an act was passed entitled "An act to encourage the patenting of lands, and for other purposes." By which the Receiver-General was authorized to settle the accounts of all persons who might apply within three years from the passing the act, who are indebted to the commonwealth for the purchase money of lands, and interest, and who have not received patents; and on the payment of the usual fees of office, such persons were to receive patents upon executing a mortgage to the Governor for the use of the commonwealth, to secure the payment of the aggregate of the arrears of purchase money and interest due, in ten annual instalments, the interest of the whole aggregate sum remaining due to be paid yearly; and all mortgages executed in pursuance of the act, were to be filed in the office of the secretary of the Land-Office, to be available without the recording thereof; the secretary, before delivery of the patent, to endorse thereon, that such mortgage had been executed, &c. And the act to extend the time for patenting lands, which had been for several years annually continued, was further extended for three years.

By the 1st section of an act passed 14th of March, 1808, (chapter 2926,) the provisions of the above act were continued in force until the 1st of September, 1809.

By an act passed the 4th of April, 1809, that part of the act of 4th of April, 1805, relating to the appropriation of the purchase monies received for lands, was partially repealed and suspended until the 1st of September, 1809, from and after which day the said act was declared to be and continue in full force and effect.

The construction of this act was doubtful; and by an act passed 21st of February, 1810, all the provisions of the first section of the act of 4th of April, 1805, were re-enacted and continued until the 1st of November, 1811, and no longer. This act also provided, that any mortgage or mortgages under the said act, might be executed by any duly constituted trustee, or trustees holding lands, or by the guar-

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The mortgagors are permitted, at any time before the days of payment, to pay the whole principal and interest to that time, or a lesser sum than the whole instalments to become due, deducting, in such case, so much interest as would have accrued upon said instalments, if not discharged previously to the time or times when they were respectively made payable, and an acquittance shall be indorsed on the mortgage for such instalment, or instalments, so as aforesaid paid.

By an act passed 30th of March, 1811 all the provisions of the foregoing act of 21st of February, 1810, are continued until the 1st day of January, 1813, and no longer; *Provided*, "that nothing herein contained shall be construed, or so understood, as to entitle any person or persons, or corporate bodies, executors or administrators, on behalf of each minor, to the benefits of this act for any greater quantity than five hundred acres of land held by him, her or them, in his, her or their own right."

Connected with this subject, is the act of the 13th of April, 1807, (chap. 2863, sect. 1.) entitled "An act directing the mode of settling accounts in the Land-Office, and to prevent frauds in obtaining warrants for land."

It enacts,—That the Receiver-General, on the settlement of any account for monies due for lands, within the Indian purchases made in, and prior to the year 1768, to ascertain the amount of principal and interest due at the time of passing this act, upon such account, and upon the aggregate amount so found due, to charge interest, until the amount of the account is discharged: *Provided*, That any person paying to the Receiver-General the amount of money due from him, her or them, on or be-

fore the 1st of March, 1808, or otherwise, before said day, complying with the provisions of the act of the 4th of April, 1805, shall be charged interest only upon the principal sum due up to the time of such payment, or of executing a mortgage agreeably to the directions of the said act.

By the second section of the act of 14th of March, 1808, (chap. 2926,) the foregoing section was suspended until the 1st of September, 1809. *Provided*, "That nothing herein contained shall be understood to authorize the Receiver General to settle any account of monies due on such land in any other manner than is directed by said act, unless application be made for that purpose before the expiration of the period above limited, but in all cases of application after that period, interest shall be charged upon the aggregate sum from the time of passing the said act." (13th of April, 1807.)

The act of 13th of April, 1807, is further suspended until the 1st of November, 1811, and no longer, by the second section of the act of 21st of Feb'y, 1810, until which time patents may be granted upon paying, or securing by mortgage, the purchase money due, with interest on the principal sum only to the time of such payment, or execution of such mortgage.

The act of 13th of April, 1807, will be in operation after the 1st of Nov'r, 1811, except as to such persons as may be within the act, and proviso thereof, passed the 30th of March, 1811.

The 2d section of the said act of 13th of April, 1807, provides, that before any warrant issues from the Land-Office, for any land within the Indian purchases in and prior to 1768, the person for whose use, and in whose name such warrant is applied for, shall declare upon oath or affirmation, in addition to the usual proof required by the officers of the Land-Office, to be taken and subscribed before some one of the judges of the court of common pleas, or justice of the peace of the county where the lands lie, or before the secretary of the Land-Office, that according to the best knowledge and belief of deponent, no warrant, or other office right, had issued for such land in the name of such deponent, or of any person or persons under whom he claims, and if at any time thereafter, it should appear, that the persons deposing as aforesaid, or any of them, shall knowingly have sworn falsely, such person or persons shall suffer all the pains and penalties of perjury.

By an act passed April 4th, 1805, (chap. 2590,) it is made the duty of all

persons now holding, or that may hereafter hold unexecuted land warrants, to file or enter the same with the surveyors of the proper district within two years after the passing of this act, or within two years after the date of such warrants respectively, and on failure thereof, such warrant or warrants shall not have any force or effect against a warrant of a later date, nor against an actual settler on the lands called for in such unexecuted warrant.

By an act passed 25th of March, 1805, (chap. 2560, sect. 1.) the tickets for donation lots, in the easternmost parts of the second donation district, commonly called the struck district, are directed to be taken out of the wheel, to be reserved for and granted to those who may have settled the same, agreeably to the act of 3d of April, 1792. And persons holding donation lands within the bounds thereof, or within the triangle, and releasing his patent to the commonwealth, may, on application to the Land Office, have another unappropriated lot, or lots, of equal quantity, to be patented free of expense.

This act, which was of limited duration, was annually continued until the 1st of April, 1810, and has been permitted to expire.

On the 29th of March, 1809, an act was passed, entitled "An act abolishing the offices of Receiver-General, and Master of the Rolls, and transferring the duties therein performed to other offices, and for other purposes."

§ 1. The offices of Receiver-General and Master of the Rolls were abolished after the 10th of May, 1809.

§ 2. The books, papers and documents, in the Receiver-General's office, and the patent books, records, and documents relating to the titles of lands in the Roll's-Office are directed to be delivered to the secretary of the Land-Office, to be by him deposited in his office; and all the books, papers and other documents in the Roll's-Office, containing the records of, or relative to the enrolment of laws, or other acts of the legislature, to be delivered to the secretary of the commonwealth, to be deposited in his office.

§ 3. After the 10th of May, 1809, the fees on issuing a warrant in all cases to be four dollars, and fifty cents for each and every warrant of survey and acceptance, which shall issue, except as after excepted; and all calculations of the purchase money and interest due on lands sold, or hereafter to be sold by the state, to be made, or caused to be made, by the secretary of the Land-Office, who shall direct the pay-

ment of the money by the applicant, together with the price of the warrant, into the state treasury; and the treasurer shall give duplicate receipts for the money paid, one of which shall be deposited with the said secretary of the Land-Office before the warrant shall issue.

§ 5. After the 10th of May, 1809, the fees on patenting in all cases shall be ten dollars, where fees are receivable, for each patent that shall issue, to be paid to the state treasurer, who shall give duplicate receipts for the same, one of which shall be deposited with the secretary of the Land-Office before the issuing of the patent; the patent to be enrolled without additional fees under the direction of the said secretary, who shall also possess all the powers, and perform all the duties, so far as the same relate to the papers to be deposited in his office, hitherto appertaining to, or directed by law to be performed by the Master of the Rolls.

§ 6. The secretary of the Land-Office monthly to deliver to the Auditor-General all the receipts of the state treasurer, which shall come into his office for monies received at the treasury for lands sold, and fees paid on warrants and patents; and the secretary of the Land-Office, and the Surveyor-General, on their own oaths or affirmations, and the oaths or affirmations of their deputies or clerks, engaged in the receipt of money, shall monthly account to the Auditor-General for all fees hereafter to be received in their offices, which monies they shall pay into the state treasury.

§ 7. The secretary of the commonwealth, the secretary of the Land-Office, and the Surveyor-General, or any two of them, to constitute the Board of Property, with all the powers of the former Board.

§ 8. The secretary of the Land-Office to prepare a seal, to be styled "The Seal of the Land-Office of Pennsylvania," which, after the 10th of May, 1809, shall be applied to all patents, warrants and other papers, authenticated in said office, and all patents and warrants which shall issue thereafter, shall be signed by the said secretary, and the patents attested by his deputy or first clerk.

§ 9. Patents for reserved tracts and town and out-lots, north and west of Ohio, &c. to issue in the same manner, and the powers and duties of the governor respecting them, &c. vested in said secretary.

§ 10. Secretary of the Land-Office and Surveyor-General to be appointed for three years from said 10th day of May.

1784.

By a supplement to this act, passed 25th of December, 1809, no fee shall be received in the Surveyor General's office for filing and directing a warrant, and the whole amount of money to be paid on issuing, filing and directing the same, shall be four dollars and fifty cents.

In all applications for warrants, the applicant, at his election, may pay the interest on the purchase money accrued previously to the date of the warrant, either at the time the purchase money shall be paid, or after the return of survey shall have been made, and before the issuing of the patent.

In all cases of warrants issuing hereafter, where the return of survey shall have been previously made on proprietary locations, and whereon a warrant, commonly called a warrant of acceptance shall issue, the price of said warrant shall be two dollars.

All patent fees paid previously to the new arrangement, the same to be deducted and the patent to issue, on payment of the balance.

The act of March 29th, 1809, not to affect the payment of the surveying fees directed to be paid by certain *Connecticut* settlers. See an act passed April 4th, 1809, a supplement to the act to encourage the patenting of lands.

The following subjects being local and special, will be distinctly considered in the notes to the acts relating them respectively.

Donation lands. An act laying out a town at *Presquisie*, and for selling the different reserved tracts. An act to prevent intrusions within the counties of *Northampton*, *Northumberland* and *Luzerne*, The *Luzerne* compensating act, and the act to protect the territorial rights of the state.

PART V.

Of Surveys, and Evidence.

The statute of 33 *Edward I.*, statute 6, entitled "An ordinance for measuring of land," is reported by the judges, as extending to Pennsylvania. It begins thus.

"When an acre of land containeth ten perches in length, then it shall be in breadth sixteen perches; when it containeth eleven perches in length, then it shall be in breadth fourteen perches and an half and three quarters of one foot; &c. 160 square perches being the English statute acre; or as it is commonly termed in Pennsylvania, an acre, neat, or strict measure.

But it is to be observed, that the customary acre of *Pennsylvania*, where six acres in the hundred are allowed for roads and highways, &c. by the commonwealth, consists of one hundred and sixty-nine perches and six tenths of a perch, which produce the acre of land, with its usual allowance.

Many of the laws cited in the preceding part of this note, regulate surveys in several respects; and in the cases already noted, many points on that subject will be found. It will not be necessary to repeat them here.

By an act, entitled "An act to prevent trespasses and waste from being committed upon the lands of absent persons, and upon vacant and unappropriated lands," passed the 17th of March, 1780, (chapter 835.) printed in *McKean's* edition, page 331. and limited to nine months, it was enacted (section 4.) that during the continuance of the act, no surveyor or other person, shall presume to measure, survey, or locate, any right or claim to land, unless he be authorized so to do by the special licence of the presi-

dent or vice-president in council, under the less seal, who, upon due proof of the equity thereof, may grant the same; and every survey, location or appropriation of land, made without such licence be first obtained, and unless a return of the survey thereupon made, shall be made into the office of the secretary of the Supreme Executive Council within six months after the same shall be made, shall be utterly null and void.

§ 5. And in order to correct as far as may be, the mischiefs which have arisen, or may arise to the commonwealth by clandestine surveys and undue appropriations of vacant or waste lands made since the 4th of July, 1776.

§ 6. No survey or appropriation of vacant or unappropriated lands, which has been made within this state since the 4th day of July, 1776, shall be available in law on equity, or shall be considered as vesting any estate in such land, unless the date, and other particulars of the same, together with a clear description of the right or claim upon which it was made, shall be entered in the office of the secretary of the Supreme Executive Council; within the times herein after limited, that is to say, in case such survey has been made in the counties of Bedford, Northumberland or Westmoreland, before the 1st day of January next, and in case such survey has been made in any other county, before the 1st day of November next.

§ 7. Such entry in the office of the said secretary, shall not give any relief or benefit to any person to which he or she was not entitled before the passing of this act.

By an act passed 4th of September, 1793, (chapter 1689,) all returns of surveys, which have been actually executed

since the 4th of July, 1775, by deputy surveyors, whilst they acted under legal appointments, shall be received in the Land-Office, although the said deputies may happen not to be in office, at the time of such return or returns being made; *Provided*, That no returns be admitted, that were made by deputy surveyors who have been more than 9 years out of office. And,

By "an act to authorize the granting of patents on surveys heretofore made and received in the Land-Office," passed the 2d of April, 1811. It shall be lawful for the officers of the Land-Office to issue patents in the usual manner on surveys made, which have been heretofore returned and received by the Surveyor-General, notwithstanding any such survey may contain an excess of more than ten *per cent.* above the number of acres mentioned in the warrants respectively; *Provided*, That no such patent shall be construed to defeat or affect the right or title of any other person or persons which may have accrued by improvement or otherwise to any such excess.

In the Lessee of *Henry Drinker v. William Holliday*, jun. *Huntingdon*, May, 1796, before *Shippen* and *Teates*, justices (MSS. Reports.) The following general doctrine was delivered in charge to the jury.

When a survey has been made, which is supposed to be injurious to another claimant, he ought to file his *caveat*, or institute his suit in a reasonable time, or account satisfactorily for his neglect. Failing herein, he shall suffer for his negligence; and particularly so, where his adversary has proceeded to complete his legal title, or bestowed considerable labour in improvements.

Every survey will be presumed to be made by the consent of the applicant, unless the contrary appears; and where his dissent does appear, he must make an early complaint to the Surveyor-General; or, in his default, to the Board of Property. If he is remiss herein, his negligence will operate strongly against him; and under many circumstances, he will be supposed to have abandoned his objections to the survey.

When a survey has been completed on the ground, a new survey cannot be made without new directions; because the authority of the deputy-surveyor is determined; when such fresh powers have been given, no additional survey shall affect a fair and honest survey prior thereto, though made on a subsequent warrant or location. The intervening right shall be protected. The consequences of squeezing out titles obtained *bona fide*, after the claim of an early warrant has been satisfied, by opening the lines already closed, is highly injurious to society; and the measure is unjust in itself.

It is the duty of a deputy-surveyor to

return the survey made by him to the proper office. His default herein shall not be imputed to the person in whose favour the survey has been made. The latter depends on the actual lines on the ground, which in fact constitute the survey: the field notes, draft or return are mere evidences of it. (See *Meade's lessee v. Haymaker*, ante. and 2 *Biney*, 12, 13—*infra*.—And see 2 *Biney*, 106.

These are general rules; like all general rules, they may admit of some exceptions under special circumstances.

So, at *Washington*, October, 1800, before *Teates* and *Smith*, justices; in the Lessee of *Robert Porter v. James Ferguson* and *Abraham Feagly*, in ejectment for 139 acres of land on *Mingo* creek waters, (MSS. Reports.)

The plaintiff claimed under an entry made by *Francis Hull*, of 400 acres on *Monongahela* river, with the *Virginia* commissioners, on the 13th of November, 1779, on which a survey was made by *Nevil* and *Ritchie* of 269 acres 136 perches strict measure, on the 4th of July, 1785. The plaintiff set up another survey of 139 acres made by *Thomas Stokely*, and which he alleged was founded on a warrant of resurvey, or order of the Board of Property, but which were not produced.

The court said, that no benefit could be derived under the latter survey, unless by showing the warrant or order on which it was grounded. A survey having been once made, a new authority became indispensably necessary to justify a second survey. The legal presumption is, that the first survey was made with the full consent of the party, and shall conclude him, unless fraud or improper conduct can justly be ascribed to the deputy-surveyor, and in such case the complaint must be followed up in a reasonable time; his *laches* will otherwise postpone him. These principles have been often laid down, and conduce to the peace and safety of the country; they were delivered particularly in the cases of *Drinker's lessee v. Holliday*, and *Hollingshead's lessee v. Pollack*, tried at *Huntingdon*, May assises, 1796, and cannot be departed from. The plaintiff suffered a nonsuit.

In the Lessee of *Steele* and wife *v. Finday*, at *Turk*, April, 1801, before *Teates* and *Blackenridge*, justices, (MSS. Reports.) The court laid it down as a clear rule of law, that if a person obtains a second survey on a warrant which has been once filed, he thereby abandons his first survey, *if the same was not returned into the Surveyor-General's office, before an adverse survey is made*, provided the same was done with his consent or procurement; and every survey shall be presumed to be made with the full consent of the party, unless the contrary appears.

1784.

And, in the Lessee of *Hunter v. Meason and Wells, Fayette*, October, 1804, before *Yeates and Smith, J.* (MSS. Reports.) The court said, that upon the most precise and descriptive warrant or application, it is the duty of the owner to shew the lands intended thereby, to the surveyor, and to furnish provisions and chain carriers, or pay the expenses thereof. If a survey is made with which he is dissatisfied, he should without delay complain to the Surveyor-General, or Board of Property, and pray for redress; otherwise the survey will conclude him. But it is certainly true, that the deputy-surveyor may execute such warrant or application in his hands, without the personal attendance of the owner, or any one in his behalf. Should he do so, the owner becomes subjected to his acts, as he thereby discharges the office of an agent for his principal, unless there is some fraud in the case. If the surveyor shall refuse to execute the survey on the lands being shewn to him, and an offer to pay the expenses attendant thereon, a complaint should be made in a reasonable time to the Board of Property, who will direct a special order to issue; and the deputy-surveyor will be subjected to a removal from office. These principles are founded in good sense, public convenience, and a regard to the common safety, and are the common law of the country.

Lessee of *Henry Dwyer v. Samuel Hunter*, Northumberland, October, 1796, before *Yeates and Smith, Justices.* (MSS. Reports.)

Where lands have been patented, and the titles thereof are free from suspicion, any subsequent survey of the same lands, under warrants or locations, are merely void in themselves unless there are strong circumstances of an antecedent possession in the adverse party, or in the instances of surveys made in consequence of the decision of a court of law, on a question tried between the parties, or order of the Board of Property. The improper practice of some surveyors, in making such surveys, and afterwards omitting to mention the former surveys in their returns, has been the great source of uncertainty of right, litigation and uneasiness, under which *Pennsylvania* has long laboured.

On general principles the party is concluded by the lines of his patent unless special circumstances exist to form an exception to the common rule. Lessee of *Davis v. Butterbach, Franklin*, April, 1797, same judges. (MSS. Reports.)

A survey adopted by the Land-Office

though not made by the regular officer, may be read in evidence. Lessee of *Shields v. Buchanan, Westmoreland*, May, 1797, before *Yeates and Smith, Justices*, and Lessee of *Funston v. M'Mahon, Northumberland*, October, 1797, before *M'Kean, C. J. and Yeates, J.* (MSS. Reports.)

In the Lessee of *John Yoder v. William Flemming*, at Mifflin, May, 1798, before *Shippen and Yeates, Justices*, (MSS. Reports.) The only question which occurred, was, whether the pretensions of a party shall be determined by the courses and distances expressed in the return of survey, or by the marked trees and lines actually run?

The court in their charge, observed, that it was almost impossible to doubt on the subject. The natural or artificial boundaries of a survey have uniformly prevailed, and there is absolute certainty when a right line is followed from one marked corner to another; but the best surveying instruments will vary in some small degree. For the sake of public convenience, and individual safety, all the lands comprised within certain marked lines, or by proceeding from marked and known corners, will pass to the grantee in a deed. Any surplus measure, or variation in the courses and distances set out, will not vitiate the instrument. The lines actually run on the ground are the true survey and appropriation of the land contracted for. But the return of survey is only evidence thereof, and shall be controlled by the actual survey. This point has frequently been determined; and particularly in the case of the lessee of *John Walker v. Jacob Furry and Michael Krehl*, tried at *Nisi Prius*, at *Carlisle*, before *M'Kean, C. J.* on the 26th of November, 1790, where several mistakes had been made in the survey.

As to the time when a survey was made, it was held in *Dawson's lessee v. Laughlin, Allegheny*, May, 1799, before *Yeates and Smith, Justices*, (MSS. Reports,) that parol proof could not legally be given to ascertain it; but that a copy of the survey was the best evidence of it, which it was always in the power of the party to procure; and great mischiefs would arise from the relaxation of the rule, by receiving unwritten evidence on this head.

With respect to the extension of the lines of a survey; In the Lessee of *Nicholas and others v. Holliday*, at *Huntingdon*, May, 1802, before *Yeates and Brackenridge, Justices*, (MSS. Reports.) Plaintiff claimed under a warrant to *Edward Nicholas*, for 150 acres; and a survey thereon of 199 acres and 17 perches, made 25th of May, 1765, by

Samuel Finlay, who acted under *Richard Tea*, the surveyor of the district. *Finlay* surveyed four other warrants at the same time, amounting in the whole to 1100 acres, but having included only 550 acres, he, in the month of July following, extended the lines of the different surveys in his drafts, by order of *Tea*, who made pretensions to the adjoining lands.

The Court said, that the practice had been for surveyors to run and mark the boundaries on the ground, and afterwards calculate their contents. They could then add to, or diminish the quantities surveyed on the closing lines. But if any great mistake had been made, careful surveyors usually went on the ground again, and made new surveys, obliterating their former marks. After a survey was returned into the Surveyor-General's office, the lines could not be extended, without a new warrant or order of survey, their former authority being *functus officio*: but before such return, the surveyor might extend the lines of a survey made by mistake, where no injury resulted to other claimants. And see *Biddle's lessee v. Dougal*, to the same effect. 2 Binney 37, and *Evans v. Nargong*, ib. 55.

Where a survey has been made on a warrant generally descriptive, and a resurvey is made thereof by order of the Board of Property, whereby part of the old survey is omitted, and new lands added, part whereof have been surveyed under intervening rights, the title cannot prevail as to such omissions, or additions, injurious to other persons. But as to such parts of the land as were comprehended in the old survey, and were not dropped or abandoned by the resurvey, and as to such additions as were not theretofore surveyed under other rights, the title must prevail. *Addleman v. Way*, *Huntingdon*, May, 1805, before *Yeates* and *Smith*, Justices, (MSS. Reports.)

It is not essential to the validity of a survey of a body of lands, that the lines of each tract should be marked on the ground. It is sufficient if the surveyor has marked lines enough to identify the particular tracts. But in such case the surveyor is not intitled to the full compensation given by law. *Woods v. Ingersol*, 1 Binney, 146.

If a survey has been duly made under legal authority, and the land surveyed remains open to purchasers, a warrant coming afterwards to the hands of the deputy, may be applied by him to the survey already made, without running and marking the lines anew. So, where the lands to be surveyed are bounded by the lines of other tracts, sur-

veyed before, he need not run those lines over again. Lessee of *M^r Rhea v. Plummer*, 1 Binney, 227.

The return of a deputy-surveyor is *prima facie* evidence, but not conclusive, of the truth of the matter returned. It would be a reflection on courts of justice, if, where the party had in truth procured a legal survey to be made, he should be estopped from shewing it, merely because there had formerly been an illegal survey, and the officer had made a mistake in his return. *Faulkner v. the lessee of Eddy*, in error, 1 Binney, 183.

A survey made by an assistant deputy-surveyor for himself, is of no validity 'till it is recognized by his principal. *M^r Kinzie v. Crow*, 2 Binney, 105.

Applications made to deputy-surveyor to make a survey, and what passed thereon, are proper evidence. They are acts done in prosecution of the title, and tend to shew that no *laches* is imputable to the party who took out the warrant, but that he made the proper efforts to complete his title. Such evidence has constantly been received. Were it otherwise, it would scarcely ever be possible to shew fraud, or improper conduct on the part of the deputy-surveyor. *Nesbit's lessee v. Titus*, *Huntingdon*, May, 1793, before *M^r Kean*, C. J. and *Yeates*, J. MSS. Reports.

In the Lessee of *John Hubley* and others v. *Benjamin Chew*, *Northumberland*, October 1796, before *Yeates* and *Smith*, Justices. (MSS. Reports.) The plaintiff claimed under 18 different warrants, dated the 16th of August, 1773, to *Bernard Hubley*, and others; a survey begun by *Jesse Lukens*, on the 7th of September, 1773, (but nothing further done, than running two lines, by reason of the appearance of some Indians,) and the surveys finally completed on the 14th, 15th, 16th, 17th, 18th and 19th of April, 1777, by *Joseph Wallis*, under *Charles Lukens*, deputy-surveyor.

A small memorandum book of field notes of *Jesse Lukens*, was offered in evidence by the plaintiff, and excepted to by defendant, and a witness was adduced, who swore it did not appear to be *Lukens's* hand-writing; but it appearing to have been found amongst the papers of the deputy-surveyor of the district, and that other witnesses believed the notes to be *Lukens's* writing, (though having been first traced out with a black-lead pencil, and afterwards run over with a pen and ink, the usual character of his hand-writing was disguised thereby, and rendered more stiff,) the court directed it should be read in evidence.

The surveys made by *Joseph Wallis*

1784. were also offered in evidence, and opposed in the like manner. On the face thereof they purported to be made on the 14th, 15th, 16th, 17th, 18th and 19th of April, 1777, and were returned in these words, "For Charles Lukens, esq. Joseph Wallis. (D. S.)"

Proof was given, that on a hearing between the parties, before the Board of Property, in April, 1793, *Wallis* had admitted that he had surveyed the lands in 1777, but made no returns thereon, and denied that the letters (DS) therein, were his hand-writing: some witnesses deposed, that they did not believe those letters (DS) were his hand-writing; and others deposed the contrary.

A special certificate from *Daniel Brodhead, Surveyor-General*, accompanied each survey, in these words: "The above is a true copy of the original remaining in my office, which does not appear to be registered as other returns are in the books kept for that purpose, and the survey appears to have been made at a time when the Land-Office was closed, and no Surveyor-General, or deputy, under the new constitution was appointed."

The plaintiff's counsel admitted, that their surveys were not returned into the Surveyor-General's office 'till after 1781, and it was sworn, that *John Musser* (who, it was agreed, was interested in the lands claimed by the plaintiff,) had delivered them into the office; but the precise time and manner of doing it, did not appear.

It was contended for defendant, that the surveys were made without authority, and could only be considered as mere blank paper.

It was mutually agreed, that deputy-surveyors, before the revolution, were not under oath; but that they gave bond and security for the faithful discharge of their duty; and likewise, that the surveys in question, were not returned into the office of the secretary of the supreme executive council.

The defendant's counsel insisted, that the papers offered, differed from, and were materially distinguished from common returns of surveys. They have been put into the office by one of the parties, and to whom they were delivered, is uncertain; not being registered in the usual book kept for that purpose, they are either impositions on the part of *Wallis*, or an improper use has been made of his drafts.

From the principles and nature of the American Revolution, it is obvious, that all proprietary offices terminated when that great event took place. But on this subject, there can be no possi-

ble difficulty. A law of the state has expressly declared, that all appointments by the late governors of *Pennsylvania*, or by acts of assembly, should cease, the trustees of the Loan-Office only excepted.

It probably will be said, that the act for vesting the estates of the late proprietaries of *Pennsylvania* in this commonwealth, asserts, that all titles and claims derived under them, their officers, or others by them duly appointed, or otherwise, shall be thereby confirmed and established; with a proviso, that the private estates of the proprietaries only, which had been surveyed and returned into the Land-Office, on or before the 4th of July, 1776, should be confirmed to them; and that thereby, a line of distinction is drawn between the property of individuals, and of the late proprietaries, as to the times of surveys of their respective lands. To this, it is answered, that the act only refers to the titles and claims, as they stood on the 4th of July, 1776, and all the interest of the proprietaries at that time in the soil, was thereby vested in the commonwealth. The provision, in a new clause, that the proprietary estates, intended to be secured by the act, were confined to those lands which had not only been surveyed, but returned before that day, strengthens this position.

This construction, moreover, is fortified by the law of 17th of March, 1780, which was made with the express view of guarding against the mischiefs which might arise from clandestine surveys, and undue appropriations of vacant or waste lands, made since 4th of July, 1776, and enacts, that such surveys shall not be available in law or equity, or vest any title in such lands, unless they should be returned, with clear descriptions of the rights or claims upon which they were made, within the periods therein limited. That this has not been done in the present instance, has already been agreed; and consequently the terms of this law fully apply hereto, unless it is otherwise provided for, by some subsequent act of the legislature.

The law for establishing a Land-Office, directs, that all persons intitled in law or equity, to lands within the Indian purchase, by virtue of any grant, warrant or location, before the 10th of December, 1776, may receive patents, on payment of the purchase money, interest and office fees; and where surveys have not been made and returned to the former office, an order of survey and patent may be had on certain conditions, &c. All lands theretofore

surveyed and not returned, shall be returned into the Surveyor-General's office in nine months. No relief is given by this law.

The act of 5th of April, 1782, empowers the Surveyor-General, to receive returns of such surveys, as shall appear to him, to have been *faithfully and regularly* made, from the late deputy-surveyors, for such further period, as to him shall seem just and reasonable. The plaintiff, to intitle himself to the benefit of this law, must evince the *regularity* of his survey. The Surveyor-General, by his certificate, has disapproved, and not approved of these returns.

The act of 4th of September, 1793, directs, that all returns of surveys, actually executed since the 4th of July, 1776, by deputy-surveyors, *under legal appointments*, shall be received in the Land-Office, though the deputies may not be in office at the time of the return made; provided they have not been more than nine years out of office.

To intitle a party to the return of surveys contemplated by this law, they must have been actually executed by deputy-surveyors, whilst they acted under legal appointments. Now *John Lukens's* power, as Surveyor-General, expired, beyond all question, under the law of 28th of January, 1777; and his deputations must have ceased of course. It is evident, therefore, that *Charles Lukens* could have no power to make a survey of vacant lands, in April, 1777, and that *Joseph Wallis*, who acted under him, could have no greater authority than his principal.

The legislature in their act of 9th of April, 1781, justify and sanction the acts of the proprietary officers, in the granting of lands, up to the 10th of December, 1776, but no further. It is therefore submitted, that these surveys were made without authority, and cannot amount to an appropriation of any lands; and consequently, that they ought not to be received in evidence.

The plaintiff's counsel urged, that at any rate the surveys were evidence, to shew that the persons now suing, prosecuted their claim to lands, which were begun to be surveyed in 1773, and that they never lost sight of their object.

The law of November, 1779, has very general and extensive words. It declares, that, "all and every the rights, titles, estates, claims and demands, which were granted by, or derived from the said proprietaries, their officers, or others by them duly commissioned and appointed, *or otherwise*, or to which any person or persons, other than the said proprietaries, were, or are intitled, either in law or equity, or by virtue of

any deed, patent, warrant or survey, of, in or to any part, or portion of the lands comprized and contained within the limits of this state, or by virtue of any location filed in the Land-Office at any time or times before the said 4th of July, 1776, shall be, and they are thereby confirmed, ratified and established forever, &c."

Now, though the locations must be entered before that day, there are no words which limit the *surveys* to that period. The terms are "by virtue of *any deed, patent, warrant, or survey.*" The words "*or otherwise*" have some meaning, and can refer to nothing, but to some supposed or implied defect of power in the late proprietary officers. The distinction made between the lands claimed by individuals, and by the late proprietaries, in their private capacities, must strike every reasonable mind. To vest an interest in the latter, surveys must have been made and returned before a certain day, but in the former case, the legislature are wholly silent, and it may fairly be concluded, that any survey made for a private person, previous to the passing of that act, by an officer *de facto*, would be good and valid. The law favours the acts of persons in reputed authority. To reconcile the minds of the people to the measure of taking from the late proprietaries their interest and property in the soil, it became necessary to use strong expressions in the law, thereby securing all the rights and claims of individual citizens. A mortgage made on the 20th of June, 1776, acknowledged the 5th of July, and recorded on the 3d of November, 1776, was held good and valid; and one of the reasons given by the court, was, that all transactions in the Land-Office, and other offices, during the *interregnum*, which were in themselves fair and honest, have uniformly been considered as *valid*, for the sake of public convenience. 1 Dallas, 436, 438.

The reason why surveys were directed to be returned to the Secretary of the Executive Council, was merely on account of the Land-Office being shut.

The act of 9th of April, 1781, cures the defect in the plaintiff's title in not returning these surveys to this secretary's office. If the surveys were returned in nine months from the passing of that law, it is sufficient. It was not necessary that the surveyors should return the surveys with their own hands. The party interested may well do it for him; this is known to be a customary thing. If the surveys were lodged in the office before the 9th of January,

1784. 1782, there was no occasion for the Surveyor-General to exercise any discretion in the business. His certificate at this time can neither diminish, nor add weight to the surveys. They were found duly returned into his office, and derive authority from that circumstance.

The intention of the legislature, in passing the law of 4th September, 1793, was to ease the citizens of the expenses of new surveys. *Charles Lukens* did act under a legal appointment: *Joseph Wallis* did business under him; and it would be attended with the most pernicious consequences, to lay down the doctrine, that all the acts of deputy-surveyors from the 10th of December, 1776, to 27th of November, 1779, were merely void and of none effect.

The Court declared their opinion, that the surveys offered in evidence, did not appear to be executed by a proper officer, whilst he acted under a legal appointment. A mode had been provided by the act of assembly of 17th of March, 1780, by which they might have been rendered legitimate; but the directions of that law not having been pursued, by a return into the office of the secretary of the Supreme Executive Council, no succeeding law, that they knew of, cured the defect of proper authority in *Joseph Wallis*, who made the surveys. Consequently, the surveys could not be received in evidence of the appropriation of vacant lands, but only as merely pursuing and continuing the claim of the parties. The court, however, invited the plaintiff's counsel, to require that the point might be reserved for further investigation, which was done accordingly.

The plaintiff then gave evidence of having paid *Joseph Wallis* £. 127 2s. 6d. by his receipt, bearing date 9th of April, 1778, for surveying sundry tracts of land, and making a draft extraordinary: and a general draft made by *Wallis*, connecting twenty-five surveys together, was offered in evidence, and excepted to.

By the Court. If this paper is offered as evidence of an official survey, we must reject it, to preserve consistency in our opinion: but if it is offered as written declarations of *Wallis*, to strengthen, or weaken his assertions before the Board of Property, in the presence of the parties, it may be admitted for those purposes, but no further. It cannot be made use of to establish any independent fact. The court finally declared, independent of the merits, that the plaintiff could not recover; for want of an official survey: and the verdict was for the defendant; which was acquiesced in.

Papers found in the office of the deputy-surveyor of the district, and in his hand-writing, may be given in evidence, to impeach his return of survey. But such papers should be treated with due caution, and consideration had of all the attendant circumstances. So ruled, in the Lessee of *Adams v. Goodlander* and others, *Northumberland*, May, 1798, before *Shippin* and *Yeates*, Justices. (MSS. Reports.)

Letter of a deputy-surveyor to his assistant, to make a survey, is good *prima facie* evidence, though not proved to have been delivered, and the survey has been made after the death of the deputy-surveyor, but which circumstance the assistant may not have known; but it may be repelled by other proof. The authority of such assistant should not be too nicely scrutinized after a great lapse of time. *Bell's lessee v Levers*, *Northampton*, June 1800. (MSS. Reports.) S. C. 4 Dallas, 210

And, in the Lessee of *Armstrong v. Morgan*, *Huntingdon*, May 1803, before *Yeates* and *Smith*, justices, (MSS. Reports.) The plaintiff's counsel stated, that his claim depended on a written order, signed by *Richard Peters Esq.* directed to *Col. John Armstrong*, to survey to *George Croghan Esq.* 4000 acres on *Aughwick*, *Juniata*, and *Dunning's creek*, in 1761. That the said written order was afterwards burnt in the house of *Col. Armstrong*, in 1763. But the survey so made, was recited in a patent to *James Foley*, for another part of the land, "to have been made by the consent and direction of the proprietaries for *George Croghan*." After shewing which, they offered to prove the contents of the said written order by *parol* evidence: and that the Land Office had been searched, but no vestiges of the written order could be found. This evidence was objected to.

By the Court. The objection made, goes rather to the operation of the evidence offered, than to its admissibility. The great rule of evidence is, that none shall be admitted which supposes superior evidence behind in the power of the party. If an instrument be lost, after proving that it did once exist, it may be proved by a copy; or if there be none such, by witnesses *visa voce*. The law for necessity admits that, which of all things it most abhors, *parol* evidence of deeds. Even the copies of records which have been lost, may be given in evidence, though not proved to be true copies. It is admitted that all the official papers of *Col. Armstrong* were burned in 1763, and this order must be presumed to have been amongst them. The Land-Office has been

searched, &c. nothing remains in the plaintiff's power, except the parol evidence offered, which ought to be received, and its operation weighed dispassionately.

For other matters relating to surveys, and titles to lands. See the notes to the limitation act, *post*.

The reader is further referred to the end of the appendix in the 4th volume, where any additional cases on the subject which may hereafter be decided, will be noticed; and any errors in the preceding notes which may occur to the editor, or be pointed out by others, will be corrected.

It remains only to notice an act of assembly passed, 19th of March, 1804, (chap. 2451,) entitled "An act enjoining certain duties on the Surveyor-General," which enacts, that the Sur-

veyor-General shall be authorized to issue certificates of any entry or entries in the books of accounts heretofore kept by the Surveyor-General, containing entries of the time of bringing into his office any survey or surveys made by his deputies, or any of them, and the charges therein made against them or either of them, as acceptance fees for the same, under the seal of his office, and to receive the usual fee for such certificate, for which he shall account to the commonwealth; and the certificate so issued shall be deemed and admitted as legal evidence in any court within this commonwealth, any law or custom to the contrary notwithstanding.

There are no books of the nature above described, in the Land-Office, prior to *John Lukens's* time.

CHAPTER MLXXXVIII.

An ACT confirming an agreement, entered into between this state and the state of Virginia.

SECT. II. WHEREAS George Bryan, John Ewing and David Rittenhouse were duly appointed commissioners on behalf of this commonwealth, and fully authorized to meet and agree with other commissioners on the part of Virginia, upon the western boundary, and whereas the said George Bryan, John Ewing and David Rittenhouse, in pursuance of the said trust and power, did, on the thirty-first day of August, one thousand seven hundred and seventy-nine, meet certain commissioners on the part of Virginia, to wit, James Madison and Robert Andrews, and an agreement was then entered into, concluded and signed, by and between the said commissioners, on the part of their respective states, by whom they were for the purpose aforesaid delegated, which agreement was, upon the twenty-third day of September, one thousand seven hundred and eighty, unanimously confirmed by this commonwealth, as follows: Resolved, That although the conditions annexed by the legislature of Virginia to the ratification of the boundary line, agreed to by the commissioners of Pennsylvania and Virginia, on the thirty-first of August, one thousand seven hundred and seventy-nine, may tend to countenance some unwarrantable claims which may be made under the state of Virginia, in consequence of pretended purchases or settlements, pending the controversy; yet this state, determining to give to the world the most unequivocal proof of their earnest desire to promote peace and harmony with a sister state, so necessary during this great contest against the common enemy, do agree to the conditions proposed by the state of Virginia, in their resolves of the twenty-third day of June last, to wit, That the agreement made on the thirty-first day of August, one thousand seven hundred and seventy-nine, between James Madison and

Recital.

1784.

Boundaries
described.

Robert Andrews, commissioners of the commonwealth of Virginia, and George Bryan, John Ewing and David Rittenhouse, commissioners for the commonwealth of Pennsylvania, be ratified, and finally confirmed, to wit : That the line, commonly called Mason and Dixon's line, be extended due west, five degrees of longitude, to be computed from the river Delaware, for the southern boundary of Pennsylvania, and that a meridian, drawn from the western extremity thereof, to the northern limits of the said states, respectively, be the western boundary of Pennsylvania, for ever, on condition, that the private property and rights of all persons, acquired under, founded on, or recognized by, the laws of either country, previous to the date hereof, be saved and confirmed to them, although they should be found to fall within the other, and that in the decision of disputes thereon, preference shall be given to the elder or prior right, which ever of the said states the same shall have been acquired under, such persons paying, within whose boundary their lands shall be included, the same purchase or consideration money, which would have been due from them to the state, under which they claimed the right ; and where any such purchase or consideration money hath, since the declaration of American independence, been received by either state for lands, which, according to the before recited agreement shall fall within the territory of the other, the same shall be reciprocally refunded and repaid ; and that the inhabitants of the disputed territory, now ceded to the state of Pennsylvania, shall not, before the first day of December, in the present year, be subject to the payment of any tax, nor at any time to the payment of any arrears of taxes or impositions, heretofore laid by either state ; and we do, hereby, accept and fully ratify the said recited condition, and the boundary line formed.

SECT. II. And whereas it is right and just, that the said agreement and every part thereof, should be confirmed by this state, saving unto all persons their rights acquired as aforesaid, before the ratification before cited, in order that no cause whatever should interrupt that harmony, which it is the desire of this commonwealth to preserve with a sister state.

Continued.
iv clause.

SECT. III. *Be it therefore enacted, and it is hereby enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same,* That the agreement and stipulations before recited, and every part thereof, entered into as aforesaid, is hereby ratified and confirmed, and declared to be valid and binding, on behalf of this commonwealth, and as effectually, and to all intents and purposes, as if the said agreement was especially recited in this act.

Passed 1st April, 1784.—Recorded in Law Book No. II. page 332.

CHAPTER MXCI.

An ACT for incorporating the United Presbyterian Church in Lower Paxton, Lancaster county.

Passed 1st April, 1784.—Private Act.—Recorded in Law Book No. II. pa. 340.

CHAPTER MXCV.

1784.

A SUPPLEMENT to an act, entitled "An act for continuing the arch over the public common sewer of the city of Philadelphia, through the middle of the Dock, and covering the same with earth, from Walnut-street to the foot-bridge; and for raising a fund for defraying the expenses thereof, and for other purposes."

SECT. I. WHEREAS, in and by the said act, passed the thirtieth day of March last, it was enacted, that the commissioners for paving the streets of the city of Philadelphia should, and they were thereby authorized and required, with all convenient expedition, to employ the necessary labourers, workmen and artificers, and to provide all requisite materials, and to cause a good substantial arch of brick, founded on strong stone walls, and floored with plank or logs, at least five inches thick, to be erected and turned along the middle, or near the middle of the dock, which arch should be at least nine feet wide, and of an height sufficient to give vent to the waters, and should begin at the end of the present common sewer at Walnut-street, and be extended south-eastward, to the main branch of the Dock, adjoining the public landing, and should cause the earth over the same to be levelled, so as to form a public street or highway, which should for ever thereafter be and remain open for the public use, and should be called and known by the name of Dock-street.

[Original act ante. pa. 100. chap. 1080.]

SECT. II. And whereas the said commissioners, in obedience to the requisitions of the said act, have prosecuted the said work, and the same is now in great forwardness, so that they are nearly ready to lay the foundation of the south-eastern extremity of the said arch, but doubts have arisen, how far the same was, by the said act, intended to extend.

SECT. III. And whereas it appears to this House, by the report of a committee appointed for that purpose, that, "the said arch ought to be continued a few feet farther than was directed by the said act, in order to deliver the water properly into the Dock, and give it a direction towards the river, more parallel with the water course of the other arch, with which it is there to form a junction."

SECT. IV. Now, therefore, as well to answer the purposes herein before recited, as to continue the said Dock-street southward, so as to open a communication through the same with the southern parts of the city, which would otherwise be in a great degree prevented, *Be it enacted, and it is hereby enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same,* That the said commissioners shall, and they are hereby authorized and required to extend and continue the said arch southward, as far as the middle of the main branch of the Dock, and eastward, so far as to strike a continuation of the eastwardmost line of Dock-street, and also to continue and extend the arch, leading from the south-western parts of the city, from its present mouth eastward, so as to form a proper junction with the other arch, and to erect a wall in a direct line with the east side of Dock-street, across the main branch of the Dock, and to fill up and level the earth, so as to form and continue the

Commissioners authorized to extend and continue the arch over the dock, &c.

1784. said Dock-street southward, to the public ground on the south side of the said main branch of the Dock.

Proviso.

[SECT. V. *Provided always nevertheless*, That nothing in this act contained shall extend, or be construed to extend, to authorize the the said commissioners to raise, levy or collect any greater or further sum, for all and every the purposes in the said recited act, to which this is a supplement, mentioned, than in and by the said recited act is provided, nor to expend or appropriate more of the said monies so provided for, and directed to be raised, than the sum of three thousand five hundred pounds, for or concerning the opening and extending the said Dock-street, and completing the said arches, as herein before mentioned, described and directed.]

Passed 1st September, 1784.—Recorded in Law Book No. II. page 357.

CHAPTER MXCVI.

An ACT for erecting the south-western part of the county of Cumberland into a new county.

SECT. I. WHEREAS many of the inhabitants of the south-western parts of the county of Cumberland have, by their petition to the General Assembly of this state, represented the inconveniences and hardships which they suffer, by the large extent of the said county of Cumberland, and the great distance at which the said petitioners dwell from the town of Carlisle, where the courts of justice, and the public offices of the same county, are held and kept, and that by reason of such remoteness of the said courts and offices, the recovery of their just debts and demands is rendered difficult and chargeable, and in some cases is unequal to the pains and costs, which they would be put to in prosecuting and suing for them ; and that felons, misdoers, and other offenders, from the same causes, often escape the punishment due to their demerits : For remedy whereof,

Boundaries.

SECT. II. *Be it enacted, and it is hereby enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same*, That all and singular the lands, lying and being within that part of Cumberland county, which are bounded as followeth, that is to say; beginning on the York county line, in the South Mountain, at the intersection of the line between Lurgan and Hopewell townships, in Cumberland county ; thence by the line of Lurgan township (leaving Shippensburg to the eastward of the same,) to the line of Fannet township ; thence by the lines of the last mentioned township (including the same,) to the line of Bedford county ; thence by the line of Bedford county, southwardly, to the Maryland line ; thence by the said line, east, to the line of York county ; thence by the line of York county, along the South Mountain, to the place of beginning, be, and hereby are, erected into a county, named, and hereafter to be called, the county of " Franklin."

Courts, &c.
constituted.

SECT. III. *And be it further enacted by the authority aforesaid*, That the said county of Franklin is entitled to, and shall at all

times hereafter have, all and singular the courts, jurisdictions, 1784.
offices, rights and privileges, to which the counties of this state are
entitled, by the constitution and laws thereof.

SECT. VIII. *And be it further enacted by the authority aforesaid,* Sheriffs, &c., shall give security. [Altered by subsequent acts, with respect to Sheriffs and Treasurers. See Index.]
That the Sheriffs, Treasurers, Prothonotaries, [collectors of excise,] and all such officers as have heretofore usually given surety for the faithful discharge of their respective offices, who shall hereafter be appointed or elected in the said county of Franklin, before they, or any of them, shall enter upon the execution of their respective offices, shall give sufficient security, in the same sums, in the same manner and form, and for the same uses, trusts and purposes, as such officers are obliged by law, for the time being, to do in the county of Cumberland.

SECT. IX. *And be it further enacted by the authority aforesaid,* Elections to be holden for representatives.
[That at the first general election to be holden for the said county of Franklin, at Chambersburgh, on the second Tuesday of October next, there shall be chosen three Representatives, to serve them in the General Assembly, one Counsellor, two fit persons for Sheriffs, and two fit persons for Coroners, and three Commissioners,] in the same manner, and under the same rules, regulations and penalties, as by the constitution and laws of this state are directed, in respect to the other counties; and the said Representatives, [Counsellor,] and other officers, when chosen, and duly qualified, shall have and enjoy all and singular such powers, authorities and privileges, in and for their county, as such officers elected in and for any other county, may, can, or ought to have.

SECT. XI. *And be it further enacted by the authority aforesaid,* Trustees appointed.
That James Maxwell, James M'Calmont, Josiah Crawford, David Stoner, and John Johnston, are hereby appointed trustees for the said county of Franklin, and they, or any three of them, shall take assurances of and for two lots of ground, in the town of Chambersburgh or Chamberstown, in the township of Guilford, within the said county of Franklin, for the seats of a court-house, and of a county gaol or prison, for said county, in the name of the commonwealth, in trust and for the use and benefit of the said county of Franklin, and thereupon to erect a court-house and prison, sufficient to accommodate the public service of the said county.

SECT. XIII. Whereas it is but just and reasonable, that Franklin county should have their full proportion or share of what money is raised for Cumberland county, for county uses, after all just demands against said county of Cumberland, before passing this act, are paid: Therefore,

SECT. XIV. *Be it enacted by the authority aforesaid,* Debts due by Cumberland to be ascertained, and overplus allowed.
That the commissioners of Cumberland county shall ascertain all the just debts due by said county, (before passing this act,) and deliver a certified copy of all such debts to the trustees of Franklin county, within three months after this present time; and if the taxes assessed and laid in Cumberland county, before passing this act, for county uses, shall be more than sufficient to pay all the just debts of said county, when the said taxes shall be collected and paid to the Treasurer of Cumberland county, he, the said Treasurer, shall pay unto the trustees of Franklin county their full proportion or

1784. part of such overplus money, agreeably to the taxes the said two counties have respectively paid; the same to be ascertained by the commissioners of Cumberland county.

Passed 9th September, 1784.—Recorded in Law Book No. II. page 365. (c)

(c) The sections omitted, are obsolete or repealed. Sect. 4. Courts to be held at Chambersburg, till court-house built.—(see sect. 11.) Sect. 5. Justices of the peace to be elected.—Provision with regard to taxes already assessed, and arrears of excise. 7. Suits already commenced not to be discontinued, &c. 10. Number of representatives fixed.—(supplied.) 12. Provision for levying money for erecting the public buildings. (obsolete.)

The line between Franklin and Cumberland being doubtful, it was explained by an act passed March 27th, 1790, (chap. 1487,) in the following manner, "That a line beginning at York county line, in the South mountain, at the intersection of Lurgan and Hopewell townships; thence by a line composed of part of the original line of Lurgan township, and one to be run, so as to leave the tract of land, now or late of Edward Shippen, whereon the town of Shippensburg is erected, within the county of Cumberland, to the line of Fannet township; thence by the lines of the last mentioned township, (leaving the same in Franklin county,) to the line of Bedford county, shall be the boundary line between the counties of Cumberland and Franklin."

By an act passed March 29th, 1798, (chap. 1982,) all that part of Bedford county, commonly called the Little Cove, and lying eastward of a line to begin in the Maryland line, near the Great Cove, or Tuscarora mountain; thence running north easterly, along the summit of the said mountain, until it intersects the present line between Bedford and Franklin counties, was annexed to Franklin county, and to be considered as part of Montgomery township, and vote therewith; until otherwise directed. Commissioners were appointed by the act to run the boundary line, at the expense of Franklin county.

Franklin county was divided into four election districts, by an act passed September 10th, 1787, (chap. 1290.)

Lurgan and Southampton townships, erected into the fifth district, by act of September 27th, 1788, (chap. 1351.)

Letterkenny township annexed to the fifth district, and the place of holding elections therein, changed, and part of Southampton annexed to the first district, by an act passed September 4th, 1793, (chap. 1692.)

The electors of the townships of Fannet and Metal, to hold their general elections at the school house in Fannetsburg, by act of March 21st, 1797, (chap. 1922, sect. 8.)

Washington township erected into a separate district, to be called the sixth district, by act of March 3d, 1800, (chap. 2104.)

Fannet township made a separate district by act March 19th, 1804, (chap. 2450.)

The place of holding the general elections for Antrim township established April 14th, 1805, (chap. 2599, sect. 20.)

Southampton township made a district by act passed April 11th, 1807, (chap. 2836, sect. 17.)

By the last enumeration, the county of Franklin contained three thousand seven hundred and eighty-nine taxables, and by act of March 21st, 1808, (chap. 2931,) passed in pursuance thereof, sends three members to the house of representatives, and one member to the senate.

The counties of Adams, Franklin and Cumberland, compose the ninth judicial district, and the courts in Franklin county are held on the second Mondays of January, April, August and November; the term continues one week.

By the act of March 11th, 1809, the counties of Cumberland, Bedford, Franklin, Huntingdon and Adams, compose the southern district of the supreme court, and the term is held at Chambersburg, on the Monday week next following the end of the second week of the term of the western district, which latter is held on the first Monday of September annually. The term to continue two weeks, if necessary, with power to hold adjourned courts, when necessary.

For other matters relating to this county, see the General Index, title "Franklin county."

CHAPTER MXCVII.

1784.

An ACT for erecting part of the county of Philadelphia into a separate county.

SECT. I. WHEREAS a great number of the inhabitants of the county of Philadelphia, by their petition, have humbly represented to the Assembly of this state the great inconvenience they labour under, by reason of their distance from the seat of judicature in the said county: For remedy whereof,

SECT. II. *Be it enacted, and it is hereby enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same,* That all and singular the lands lying within that part of Philadelphia county, bounded as herein after described, beginning on the line of Byberry township, and the township of the manor of Moreland, where it intersects the line of Bucks county, thence westward along the northern lines of Byberry, Lower Dublin, and Oxford townships, to the line dividing the townships of Cheltenham and Bristol; and thence along the said line dividing Germantown township from the township of Springfield; and thence along said line, to the line dividing the township of Springfield aforesaid from the township of Roxbury, to the river Schuylkill; thence down the said river, to the line dividing the townships of Blockley and Lower Merion; and thence along said line, to the line of the county of Chester; thence by the line of Chester county to the line of Berks county; thence by the line of Berks county, to the line of Northampton county; thence by part of the line of Northampton county, and the line of Bucks county; thence along the said line of Bucks county, to the place of beginning; be, and hereby are, erected into a county, named, and hereafter to be called, "**Montgomery County.**"

Boundaries described.

SECT. III. *And be it further enacted by the authority aforesaid,* That the inhabitants of the said county of Montgomery shall, at all times hereafter, have and enjoy all and singular the jurisdictions, powers, rights, liberties and privileges, whatsoever, which the inhabitants of any other county in this state do, may, or ought to enjoy, by any charter of privileges, or the laws of this state, or by any other ways and means whatsoever.

Privileges declared.

SECT. IV. *And be it further enacted by the authority aforesaid,* That the inhabitants of each township or district within the said county, qualified by law to elect, shall meet at some convenient place within their respective townships or districts, at the same time the inhabitants of the several townships of the other counties within this state shall meet for like purposes, and choose inspectors, and at the time appointed by law, the freemen of said county of Montgomery shall meet at the house of Hannah Thomson, innkeeper, in the township of Norriton, and there elect Representatives, and the freemen of the county of Philadelphia shall meet at the state-house, in the city of Philadelphia, and there elect Representatives, to serve them in Assembly, [one Counsellor,] two fit persons for Sheriffs, two fit persons for Coroners, and three Commissioners, in the same manner, and under the same rules, regulations and penalties, as by the constitution and laws of this state are directed in respect to other

Time and place for holding elections for Representatives.

1784. counties, which Representatives, so chosen, shall be members of the General Assembly of the commonwealth of Pennsylvania, and shall sit and act as such, as fully and as freely as any of the other Representatives of this state do, may, can, or ought to do; [and the said Counsellor, when so chosen, shall sit and act, as fully and as freely as any of the other members of the Supreme Executive Council of this state do, may, can, or ought to do.]

Proportion of Representatives
[Supplied.]

[SECT. V. *And be it further enacted by the authority aforesaid,* That the county of Montgomery shall, until otherwise altered by the legislature of the state, be represented in the General Assembly by four members, and the county of Philadelphia shall be represented in the General Assembly by five members.]

Justices of the Supreme Court to have like powers.

SECT. VII. *And be it further enacted by the authority aforesaid,* That the Justices of the Supreme Court of this state shall have like powers, jurisdictions and authorities, within the said county of Montgomery, as by law they are vested with and entitled unto in the other counties within this state; and are, hereby, authorized and empowered, from time to time, to deliver the gaol of the said county of capital or other offenders, in like manner as they are authorized to do in other counties of this state.

Commissioners to purchase land for county buildings.

SECT. X. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful to and for Henry Pawling, jun. Jonathan Roberts, George Smith, Robert Shannon, and Henry Cunnard, of Whitpain township, all of the aforesaid county, yeomen, or any three of them, to purchase and take assurance to them, and their heirs, in the name of the commonwealth, of a piece of land, situated in some convenient place in the neighbourhood of Stoney-run, contiguous to the river Schuylkill, in Norriton township, in trust and for the use of the inhabitants of the said county, and thereon to erect and build a court-house and prison, sufficient to accommodate the public service of the said county.

Mode of defraying the expense of county buildings.

SECT. XI. *And be it further enacted by the authority aforesaid,* That such part of the money as shall arise from the sale of the old prison and work-house, and lot of ground thereunto belonging, in the city of Philadelphia, as directed by an act of General Assembly of this commonwealth to be sold for the use of the city and county aforesaid, be apportioned for the defraying the charges of purchasing the land, building and erecting the court-house and prison aforesaid, in the ratio or proportion of taxes as paid between the said county of Montgomery, and the county of Philadelphia, and this city; but in case the same should not be sufficient, it shall and may be lawful to and for the commissioners and assessors of the said county, or a majority of them, to assess and levy, and they are hereby required to assess and levy, in the same manner as is directed by the act for raising county rates and levies, so much money as the said trustees, or any three of them, shall judge necessary, for purchasing the said land, and finishing the said court-house and prison.

[The old gaol directed to be sold, See Act of 8th. 1785, chap. 1151.]

Provido.

SECT. XII. *Provided always,* That the sum of money so to be raised does not exceed three thousand pounds, current money of this state.

Orayiso.

SECT. XIII. *Provided also, and be it further enacted by the authority aforesaid,* That no action or suit, now commenced or depend-

ing in the county of Philadelphia, against any person living within the bounds of the said county of Montgomery, shall be stayed or discontinued, but that the same action or actions, already commenced or depending, may be prosecuted, and judgment thereupon rendered, as if this act had not been made: And that it shall and may be lawful for the Justices of the county of Philadelphia, to issue any judicial process, to be directed to the Sheriff or Coroner of Philadelphia county, for carrying on and obtaining the effect of the aforesaid suits, which Sheriff and Coroner shall, and are hereby obliged to yield obedience in executing the said writs, and make due return thereof before the Justices of the said court for the said county of Philadelphia, as if the parties were living and residing within the same.

SECT. XXI. And whereas it is represented, by petition to the General Assembly, that, by the lines herein before mentioned, a long narrow neck or point of land, being part of the Manor of Moreland, and lying between the townships of Byberry and Lower Dublin, in the county of Philadelphia, would be included in the county of Montgomery, to the great inconvenience and injury of the inhabitants of the said neck of land, who have prayed that they may remain within the county of Philadelphia:

SECT. XXII. *Be it therefore enacted by the authority aforesaid,* That the boundary lines of the said county of Montgomery shall be as follow: that is to say, beginning in the line of Bucks county, where the same is intersected by the line which divides the townships of Byberry and the Manor of Moreland; thence southwesterly, along the last mentioned line, to the first corner or turning thereof; and thence on the same southwesterly course, to the line of Lower Dublin; and thence westwardly, along the northern line of Lower Dublin, and so on, as the lines of the said county of Montgomery are herein before described, to the place of beginning; any thing herein before contained to the contrary in any wise notwithstanding.

Passed 10th September, 1784.—Recorded in Law Book No. II. page 359. (*d*)

(*d*) The sections omitted, are obsolete—as sect. 6. Taxes already assessed to be paid to the treasurer of Philadelphia county. 8, 9. For the election of justices of the peace, and courts to be held by them, which are repealed by the existing constitution. 14, 15, 16. The powers and duties of the collector of excise, (repealed.) 17. Sheriff of Philadelphia to act until a sheriff should be elected for the new county. 18, 19. Commissioners appointed to run the boundary lines. 20. Sheriff and treasurer to give security, (supplied.)

The county of Montgomery divided into five election districts, by act of March 31st, 1797, (chap. 1934.)

The fifth district divided, and the sixth district erected April 8th, 1799, (chap. 2050.)

The seventh and eighth districts established January 19th, 1802, (chap. 2210.)

The ninth district erected March 31st, 1806, (chap. 2715, sect. 11,) and Franconia township annexed to the

fourth district, ib. sect. 12—afterwards to the eighth district, April 4th, 1809.

The sixth district divided April 11th, 1807, (chap. 2856, sect. 31.)

By the last enumeration, the county of Montgomery contains five thousand six hundred and twenty-six taxables: and by the act apportioning the representation in pursuance thereof, passed March 21st, 1808, (chap. 2931,) sends four members to the house of representatives, and one member to the senate.

The counties of Delaware, Chester, Bucks and Montgomery, compose the seventh judicial district by the act of Feb'y 24th, 1806, (chap. 2634,) the term continues two weeks. The courts in Montgomery, are held on the 4th Mondays after the 3d Mondays in January, April, July and October.

This county is part of the eastern district of the supreme court.

For other matters relating to this county see title "Montgomery county," in the General Index.

Boundary
lines ascertained

1784.

CHAPTER MXCVIII.

An ACT to establish and incorporate a public school at Germantown, in the county of Philadelphia.

Passed 15th September, 1784.—Private Act.—Recorded in Law Book No. II. page 372.

CHAPTER MXCIX.

An ACT to enable Marcus Hulings, and his heirs and assigns, to erect, build and maintain a dam over Shearman's creek, in the county of Cumberland, near the mouth of the same creek.

[THE dam to be built and maintained agreeable to the rules and regulations, and the party to be subject to the pains and penalties for the breach thereof, of the act of February 26th, 1773, ante. page 406, chap. 674.]

Passed 15th September, 1784.—Private Act.—Recorded in Law Book No. II. page 369.

CHAPTER MCI.

A SUPPLEMENT to the act, entitled "An act to prevent the exportation of bread and flour not merchantable."

Original act
vol. I. p. 523,
chap. 925,
and see the
notes thereto
subjoined.

SECT. 1. WHEREAS the acts for the inspection of flour and other staple articles of this state, have been found by experience to be highly beneficial, by establishing a fair reputation at foreign markets, and thereby encreasing the demand for our commodities: And whereas superfine flour has latterly become a principal article of exportation from this state, and the laws in being have not made provision to guard against frauds in the exportation thereof:

SECT. 11. *Be it therefore enacted, and it is hereby enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same,* That, from and after the first day of November next, all flour exported or intended to be exported from this state, which shall be branded or otherwise marked as superfine, shall, before it shall be laden on board of any ship or vessel for exportation, be inspected and examined by the proper officer appointed for the inspection of flour, or his deputy, in the manner directed and described in the eleventh section of the act, to which this act is a supplement: And if the said inspector shall judge the same to be of sufficient fineness and quality in all respects to pass, and be exported as good superfine flour, of the proper merchantable standard, and as such he shall brand the same with the arms of this state, as is directed in and by the said recited act, to which this act is a supplement, in a fair and distinguishable manner; provided that every miller or bolter of such flour may, if he shall think proper, mark every such cask with such brand of superfine, before the same shall be removed from the place

Inspection of
flour as di-
rected and
regulated.

of bolting. And if the said inspector shall adjudge any such flour, having thereon the brand of superfine, to be inferior to the standard quality, which shall entitle it to be shipped and exported as superfine, he shall be, and he is hereby, authorized and directed to cut out and totally destroy such superfine brand-mark. *Provided also,* That if any dispute shall arise between the inspector and the owner or possessor of such flour, concerning the fitness thereof to pass as superfine, such owner or possessor shall and may have the same tried and determined in such manner and form as is directed and described in the said act, to which this act is a supplement, for settling disputes concerning the quality of flour therein mentioned, and the parties are hereby declared to be severally entitled to the like benefits and advantages, and subjected to the like penalties, according to the decision, in such mode as is therein directed and described, in cases of a similar nature.

1784.

Proviso.

SECT. III. *And be it enacted by the authority aforesaid,* That if any person or persons whatsoever shall impress or brand the said mark of superfine on any cask or casks of flour, after the same shall have been sent or carried away from the mill or bolting-house where the same shall have been packed, and before it shall have been inspected and allowed as superfine by the proper officer, as aforesaid, and shall be thereof legally convicted, such person shall be subject to the like penalties and punishments, as are directed to be inflicted for the counterfeiting or impressing counterfeited brand-marks, by the act to which this act is a supplement. And if any person shall wilfully impress, or cause to be impressed, the brand-mark of superfine, or the similitude thereof, on any cask of flour, after it shall have been inspected as aforesaid, or shall wilfully and fraudulently ship, or attempt to ship or put on board of any ship or vessel for exportation, any flour, the cask whereof shall bear the said mark or brand of superfine, knowing the same to be of inferior quality, or with design to deceive and to evade the regulation hereby intended, every such person, being legally convicted of any such offence or offences, shall suffer and pay the penalty of one hundred pounds for every such offence; which fine shall be recovered by the Attorney-General, for the use of this commonwealth; every cask of flour so fraudulently branded, or fraudulently shipped, or intended to be shipped, as aforesaid, shall moreover be seized and forfeited, one half for the use of the commonwealth, and the other half to the inspector, or other person who shall prosecute such offender to conviction.

Penalties on impressing.

Forfeitures. &c.

SECT. IV. *And be it further enacted by the authority aforesaid,* That all the powers and authorities vested in and given to the inspectors of flour, and their deputies, for the execution of the duties enjoined on them by the aforesaid act, to which this act is a supplement, are hereby extended and vested in the said officers, for executing the duties they are to perform by virtue of this act, as fully and amply, as if the same were enumerated and more particularly mentioned and expressed.

Clause to extend powers.

Passed 15th September, 1784.—Recorded in Law Book No. II. page 270. (*)

(*) See a supplement passed in 1811, (vol. 5.)

ACTS

OF THE

General Assembly of Pennsylvania.

Passed in the ninth General Assembly—the first Session of which commenced October 25th, and ended December 24th, 1784. The second commenced February 1st, and ended April 8th, 1785—and the third commenced August 23d, and ended September 23d, 1785.

1784.

JOHN BAYARD, SPEAKER.

CHAPTER MCIX.

[Original act, vol. 1, p. 283, chap. 533.] *An ACT to amend an act, entitled “An act to enable the owners and possessors of a certain tract of marsh meadow ground, therein described, situated in the township of Kingsessing, in the county of Philadelphia, to keep the banks, dams, sluices and flood-gates, in repair, and to raise a fund to defray the expense thereof.”*

Passed 15th December, 1784.—Private Act.—Recorded in Law Book No. II. page 380.

CHAPTER MCXI.

An ACT to alter and amend an act of Assembly, entitled “An act for opening the Land-Office, for granting and disposing of the unappropriated lands within this state.”

[See the original act, ante, p. 102, chap. 1083, and the notes thereto subjoined.] **SECT. 1. WHEREAS**, in and by the act of Assembly, entitled “An act for opening the Land-Office, for granting and disposing of the unappropriated lands within this state,” it was enjoined upon the commissioners, appointed for making a further purchase of all the residue of the unpurchased lands, within the limits of this state, that they ascertain, in their negotiation with the Indians, with the greatest possible precision, the line between the lands already purchased, and those that shall be by them purchased.

SECT. II. And whereas the directions given, as aforesaid, to the said commissioners, have been supposed by some persons to vest in the said commissioners sufficient authority to adjust and ascertain the boundaries and lines of the purchase of lands, made by the late proprietaries of the Six Nation Indians, on the fifth day of November, in the year of our Lord one thousand seven hundred and sixty-eight, so as to influence and affect the location of lands under former acts of Assembly, and of the said recited act.

SECT. III. And whereas uncertainties and inconveniencies may arise from the construction aforesaid : Therefore, *Be it enacted, and it is hereby enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same, and it is hereby declared,* That the directions above recited did not give, nor ought to be construed to give, to the said commissioners, any authority to ascertain, definitively, the boundary lines aforesaid, and that the lines of the purchase so made, as aforesaid, in the year one thousand seven hundred and sixty-eight, striking the line of the west branch of the river Susquehanna, at the mouth of Lycomick or Lycoming creek, shall be the boundaries of the same purchase, to all legal intents and purposes, until the General Assembly shall otherwise regulate and declare the same.

The lines lately settled, not definitive.

SECT. IV. And whereas the mode of sale, by auction, of the lands, which the commissioners aforesaid were directed and empowered to purchase, provided in and by the said act, appears to be inconvenient, and would be tedious, and many persons, disposed to become real settlers, would thereby be deprived of their proper shares thereof ; and whereas the direction, by the said act given to the said officers of the Land-Office, to take the bonds of the purchasers, payable within two years, for one moiety of the consideration, whereby the lien on the lands as heretofore for the purchase money, or arrears thereof, would be waved, and great damage ensue to the commonwealth : Therefore,

SECT. V. *Be it further enacted by the authority aforesaid,* That the said act, so far as it directs and authorizes the laying out the lands so to be purchased, as aforesaid, in lots, and selling them by public auction, and so far also as it directs and enables the officers of the said Land-Office to give credit for any part of the purchase money, or to take bonds for the same, shall be, and the same are hereby, repealed and made void.

Selling by auction and credit by former acts repealed.

(e) SECT. VI. *And be it further enacted by the authority aforesaid,* That from and after the first day of May next, and not sooner, the Land-Office of this commonwealth shall be open for applications for the lands within the purchase made, or to be made by the commissioners aforesaid, (the lands within this state appropriated for the redemption of depreciation certificates, and the donation lands to the officers and soldiers of the Pennsylvania line, only excepted) at and after the rate of thirty pounds for every hundred acres of the

Land-Office to be opened the first of May next, for new purchase, at thirty pounds per hundred acres.

(e) The holders of unsatisfied warrants, issued under this section, may locate the same in any district of vacant and unappropriated lands within the State.—See the act of the 3d of April, 1792, chap. 1613, sect. 15. (Note to former edition.)

1785.

Survey not to exceed one thousand acres. What to be received in payment therefor.

same, and so in proportion for greater or less quantities thereof; such application, or the survey thereof to be made, not to exceed one thousand acres, with the usual allowance of six per centum for highways; and every applicant for any of the same lands shall, before the warrant for the same issue, produce to the Secretary of the Land-Office, an acquittance signed by the Receiver-General of the said Land-Office, setting forth, that the full purchase and consideration aforesaid has been paid and satisfied; and the bills of credit of this state, dated the 20th day of April, one thousand seven hundred and eighty-one, and gold and silver money, and the certificates described and directed in and by the act aforesaid, shall be received by the said Receiver-General, in satisfaction of all purchase money, as aforesaid. (f)

Proviso, that warrants are not to be confined.

SECT. VII. *Provided always, and be it further enacted by the authority aforesaid,* That any warrant which shall be issued in pursuance of this act shall not be confined to any particular place, but shall enable the applicant to get the same located upon any vacant land, where the said applicant shall think fit, except as aforesaid; and the land which shall be surveyed upon any such warrant shall not exceed the number of acres expressed in the said warrant; and the same land shall be all located and surveyed in one tract or parcel.

SECT. VIII. And whereas divers persons, who have heretofore occupied and cultivated small tracts of land, without the bounds of the purchase made, as aforesaid, in the year of our Lord one thousand seven hundred and sixty-eight, and within the purchase made, or now to be made, by the said commissioners, have, by their resolute stand and sufferings during the late war, merited, that those settlers should have the pre-emption of their respective plantations:

All persons settled on located lands to have right of pre-emption.

SECT. IX. *Be it therefore enacted by the authority aforesaid,* That all and every person or persons, and their legal representatives, who has or have heretofore settled on the north side of the west branch of the river Susquehanna, upon the Indian territory, between Lycomick or Lycoming creek on the east, and Tyagaghton or Pine creek on the west, as well as other lands within the said residuary purchase from the Indians, of the territory within this state, excepting always the lands herein before excepted, shall be allowed a right of pre-emption to their respective possessions, at the price aforesaid.

Proviso that such settlement be prior to 1780.

SECT. X. *Provided always, and be it enacted by the authority aforesaid,* That no person shall be entitled to the pre-emption aforesaid, unless he, she or they shall have made actual settlement, as before described, before the year of our Lord one thousand seven hundred and eighty, and that no such claim shall be admitted, to or under any such person or persons, for more than three hundred acres of land, with the usual allowance for roads, to be surveyed

(f) By an act of the 3d of October, 1768, the price of lands within the seventeen districts in the counties of Northumberland and Luzerne was lowered to twenty pounds per hundred acres, payable only in specie, bills of credit of 1785, or state certificates bearing six per cent. interest. But a further reduction was made in the prices of all the public lands by the act of the 3d of April, 1792, (chap. 1613.) (Note to former edition.)

together, and in one tract, nor unless application for the same be made, and the consideration thereof tendered to the Receiver-General of the Land-Office, on or before the first day of November next. 1785.

Passed 21st December, 1784.—Recorded in Law Book No. II. page 384.

CHAPTER MCXIII.

An ACT for incorporating the Presbyterian congregation of Pequea, in the township of Salisbury, and county of Lancaster.

Passed 5th February, 1785.—Private Act.—Recorded in Law Book No. II. page 393.

CHAPTER MCXVII.

An ACT to alter and confirm the charter of the corporation for the relief of the widows and children of clergymen in communion of the church of England, in America. (g)

Passed 9th February, 1785.—Private Act.—Recorded in Law Book No. II. pa. 405.

(g.) By the 9th section of this act, the power of revising, checking and confirming the accounts and proceedings of the corporation, in the manner expressed in the charter, is transferred to the Executive, the Chief Justice, and the Attorney-General of the commonwealth, for the time being, or any two of them. (*Note to former edition.*)

CHAPTER MCXXI.

An ACT for the better securing personal liberty, and preventing wrongful imprisonments.

SECT. I. WHEREAS personal liberty is a principal blessing derived from free constitutions of government, and certain methods of proceeding should be prescribed, so that all wrongful restraints thereof may be easily and speedily redressed: *Be it therefore enacted, and it is hereby enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same,* That if any person shall be or stand committed or detained for any criminal or supposed criminal matter, unless for treason or felony, the species whereof is plainly and fully set forth in the warrant of commitment, in vacation time and out of term, it shall and may be lawful to and for the person so committed or detained, or any one on his or her behalf, to appeal or complain to any Judge of the Supreme Court, or to the President of the Court of Common Pleas for the county, within which the person is so committed or detained; and such Judge or Justice, upon view of the copy or copies of the warrant or warrants of commitment or detainer, or otherwise, upon oath or affirmation legally made, that

Habeas Corpus to be granted by Justices of Supreme Court and the President of the Court of Common Pleas of the several counties.

1785. such copy or copies were denied to be given by the person or persons, in whose custody the prisoner is detained, is hereby authorized and required, upon request made in writing by such prisoner, or any person on his or her behalf, attested and subscribed by two witnesses, who were present at the delivery of the same, to award and grant an *Habeas Corpus*, under the seal of the court, whereof he shall then be a Judge or Justice, to be directed to the person or persons, in whose custody the prisoner is detained, returnable immediate before the said Judge or Justice; and to the intent, and that no officer, sheriff, gaoler, keeper or other person, to whom such writ shall be directed, may pretend ignorance of the import thereof, every such writ shall be made in this manner, "By Act of Assembly, one thousand seven hundred and eighty-five," and shall be signed by the Judge or Justice who awards the same. And whenever the said writ shall by any person be served upon the officer, sheriff, gaoler, keeper, or other person whatsoever, to whom the same shall be directed, by being brought to him, or by being left with any of his under officers or deputies, at the gaol or place where the prisoner is detained, he, or some of his under officers or deputies, shall, within three days after the service thereof as aforesaid, upon payment or tender of the charges of bringing the said prisoner, to be ascertained by the Judge or Justice who awarded the writ, and thereon endorsed, not exceeding twelve pence per mile, and upon security given by his own bond to pay the charges of carrying him back, if he shall be redemanded and not to escape by the way, make return of such writ, and bring or cause to be brought the body of the prisoner unto or before the Judge or Justice, before whom the said writ is made returnable, and, in case of his absence, before any other of the Judges or Justices aforesaid, and shall then likewise specifically and fully certify the true cause or causes of the commitment and detainer of the said prisoner, and when he was committed, unless the commitment be in any place beyond the distance of twenty miles from the place where such Judge or Justice shall be residing, and if beyond the distance of twenty miles, and not above one hundred miles, then within ten days, and if beyond the distance of one hundred miles, then within twenty days: And thereupon the Judge or Justice, before whom the prisoner shall be so brought, shall within two days discharge the prisoner from imprisonment, taking his or her recognizance, with one or more surety or sureties, in any sum, according to his discretion, having regard to the circumstances of the prisoner, and the nature of the offence, for his or her appearance at the next court of Oyer and Terminer, General Gaol Delivery, or General Quarter Sessions of or for the county, city or place, where the offence was committed, or in such other court where it may be properly cognizable, as the case shall require, and then shall certify the said writ, with the return thereof, and the said recognizances, into the court where such appearance is to be made, unless it shall appear to the said Judge or Justice, that the party so committed is detained upon legal process, order or warrant, for such matter or offences, for which by the law the said prisoner is not bailable, and that the said Judge or Justice may, according to the intent and meaning of this act, be enabled, by investigating the

Form of a writ.

Process of service, and time and manner of returning the writ.

The Judge or Justice to discharge the prisoner from imprisonment taking a proper recognizance for appearance,

or to remand him, if not bailable.

truth of the circumstances of the case, to determine whether, according to law, the said prisoner ought to be bailed, remanded or discharged; the return may, before or after it is filed, by leave of the said Judge or Justice, be amended, and also suggestions made against it, that thereby material facts may be ascertained. 1785.

The return may be amended.

SECT. II. *And be it further enacted by the authority aforesaid,* That, in term time, it shall and may be lawful for any prisoner as aforesaid, in manner aforesaid, to move and obtain his or her *habeas corpus* out of the Supreme Court, or the Court of Common Pleas for the county in which he or she is imprisoned, whereupon proceedings shall be had as aforesaid. Habeas corpus may be moved for in term time.

SECT. III. *And be it further enacted by the authority aforesaid,* That if any person shall be committed for treason or felony, and shall not be indicted and tried some time in the next term, session of Oyer and Terminer, General Gaol Delivery, or other court, where the offence is properly cognizable, after such commitment, it shall and may be lawful for the Judges or Justices thereof, and they are hereby required, upon the last day of the term, sessions, or court, to set at liberty the said prisoner upon bail, unless it shall appear to them, upon oath or affirmation, that the witnesses for the commonwealth, mentioning their names, could not then be produced; and if such prisoner shall not be indicted and tried the second term, sessions, or court, after his or her commitment, unless the delay happen on the application, or with the assent of the defendant, or upon trial shall be acquitted, he or she shall be discharged from imprisonment. Person committed for treason or felony, not indicted at the next court, may be discharged, unless delayed for want of witnesses, or by his own act.

SECT. IV. *Provided always,* That nothing in this act shall extend to discharge out of prison any person guilty of or charged with treason, felony or other high misdemeanor, in any other state, and who by the confederation ought to be delivered up to the executive power of such state, nor any person guilty of or charged with a breach or violation of the laws of nations. This act not to operate with respect to crimes in other states, or committed in violation of the laws of nations.

SECT. V. *Provided also,* That nothing in this act shall extend to discharge out of prison any person charged with debt or other action, or with process in any civil cause, but that after discharge for such criminal or supposed criminal matter, he or she shall be kept in custody, according to law, for such other suit. This act not to release from imprisonment in any civil action.

SECT. VI. And that no person may avoid his or her trial, by procuring a removal, so that he or she cannot be brought back in time, *Be it enacted by the authority aforesaid,* That no person shall be removed upon any *habeas corpus* granted in pursuance of this act, within fifteen days next preceding the term, sessions of Oyer and Terminer, General Gaol Delivery, or other court, where the offence with which he or she stands charged, is properly recognizable, but, upon such *habeas corpus*, shall be brought before the Judges or Justices thereof, who are thereupon to do what to justice shall appertain. No person to be removed upon habeas corpus, within fifteen days next before the court, where the offence is cognizable.

SECT. VII. *Provided nevertheless,* That after such court the person detained may have his or her *habeas corpus*, according to this act. After the said court it may be issued.

SECT. VIII. *And be it further enacted by the authority aforesaid,* That if any Judge or Justice aforesaid, being appealed or com- Forfeiture, in case Judge or Justice

1785.

aforesaid re-
fuse to grant
writ of habe-
as corpus,
and made of
recorder.

plained to as aforesaid, upon view of the copy or copies of the warrant or warrants of the commitment or detainer, or upon oath or affirmation made that such copy or copies were denied as aforesaid, shall refuse or neglect to award any writ of *habeas corpus*, by this act required to be granted, he shall forfeit to the prisoner, or party grieved, the sum of three hundred pounds, to be recovered by the said prisoner or party grieved, his or her executors or administrators, against such offender, his executors or administrators, by action of debt, suit, bill, plaint, or information, in any court of record, wherein no essoin, protection, privilege, injunction, wager of law, or stay of prosecution, shall be allowed, or any more than one imparlance.

Penalty on
officer, to
whom the
writ is direc-
ted, refusing
to execute.

SECT. IX. *And be it further enacted by the authority aforesaid,* That if any officer, sheriff, gaoler, keeper, or other person to whom any such writ shall be directed as aforesaid, or any of his under officers or deputies, shall refuse or neglect to make the returns aforesaid, or to bring the body of the prisoner according to the command of the said writ, within the respective times aforesaid, all and every such officer, sheriff, gaoler, keeper or other person, under officer or deputy, shall be guilty of a contempt of the court, under the seal of which the said writ shall have issued, and shall also for the first offence forfeit to the prisoner or party grieved, one hundred pounds, and for the second offence two hundred pounds, and shall be and is hereby made incapable to hold or execute his said office; the said forfeitures to be recovered by the prisoner, or party grieved, in manner aforesaid.

Penalty on
refusing a
copy of war-
rant of com-
mitment.

SECT. X. *And be it further enacted by the authority aforesaid,* That if any officer, sheriff, gaoler, keeper, or other person, to whom such writ shall be directed as aforesaid, or any of his under officers or deputies, upon demand by the prisoner, or some person in his or her behalf, shall refuse to deliver, or within six hours after demand, shall not deliver to the prisoner, or person so demanding, a true copy or copies of the warrant or warrants of commitment and detainer of such prisoner, which are hereby required to be delivered, all and every such officer, sheriff, gaoler, keeper, or other person, under officer or deputy, so offending, shall, for the first offence, forfeit to the prisoner, or party grieved, one hundred pounds, and for the second offence two hundred pounds, and shall also be and is hereby made incapable to hold or execute his said office; the said forfeitures to be recovered by the prisoner, or party grieved, in manner aforesaid.

No person to
be recommitted
for the
same offence,
after dis-
charge.

SECT. XI. *And for preventing unjust vexation by reiterated commitments for the same offence, Be it further enacted by the authority aforesaid,* That no person, who shall be delivered or set at large upon an *habeas corpus*, shall, at any time thereafter, be again committed or imprisoned for the same offence by any person or persons whatsoever, other than by the legal order and process of such court wherein he or she shall be bound by recognizance to appear, or other court having jurisdiction of the cause, and if any other person or persons shall knowingly, contrary to this act, re-commit or imprison, or knowingly procure or cause to be re-committed or imprisoned, for the same offence, or supposed offence, any person de-

livered or set at large as aforesaid, or be knowingly aiding or assisting therein, then he or they shall forfeit to the prisoner, or party grieved, any pretence of variation in the warrant or warrants of commitment notwithstanding, the sum of five hundred pounds, to be recovered by the prisoner, or party grieved, in manner aforesaid.

1783.

SECT. XII. *And be it further enacted by the authority aforesaid,* That any person being committed to any prison, or in custody of any officer, sheriff, gaoler, keeper, or other person, or his under officer or deputy, for any criminal or supposed criminal matter, shall not be removed from the said prison or custody into any other prison or custody, unless it be by *habeas corpus*, or some other legal writ, or where the prisoner is delivered to the constable or other inferior officer, to be carried to some common gaol, or where any person is sent by any Judge or Justice, having proper authority, to some common work-house or house of correction, or where the prisoner is removed from one place to another, within the same county, in order to his or her trial or discharge in due course of law, or in case of sudden fire or infection, or other necessity; and if any person or persons shall, after such commitment as aforesaid, make out, sign, countersign, and issue any warrant or warrants for such removal, except as before excepted, then he or they shall forfeit to the prisoner, or party grieved, two hundred pounds, to be recovered by the prisoner, or party grieved, in manner aforesaid.

Penalty on removing persons imprisoned for any criminal matter, unless by *habeas corpus*, or other legal writ.

SECT. XIII. *And be it further enacted by the authority aforesaid,* That all the provisions herein before made for the awarding and granting writs of *habeas corpus*, and proceeding thereon, in case of commitment or detainer for any criminal or supposed criminal matter, shall, in like manner, extend to all cases where any person, not being committed or detained for any criminal or supposed criminal matter, shall be confined or restrained of his or her liberty, under any colour or pretence whatsoever, and that upon oath or affirmation made by such person, so confined or restrained, or by any other in his or her behalf, of any actual confinement or restraint, and that such confinement or restraint, to the best of the knowledge and belief of the person so applying, is not by virtue of any commitment or detainer for any criminal or supposed criminal matter, an *habeas corpus*, directed to the person or persons so confining or restraining the party as aforesaid, shall be awarded and granted, in the same manner, and under the same penalties, to be recovered from the same persons, as is herein before directed; and the Court, Judge or Justice, before whom the party so confined or restrained, shall be brought, shall, after the return made, proceed, in the same manner as is herein before prescribed, to examine into the facts relating to the case, and into the cause of such confinement or restraint, and thereupon either bail, remand, or discharge the party so brought, as to justice shall appertain.

Persons not committed for any criminal matter, but confined or restrained of their liberty, under any colour or pretence whatever, may proceed under this act.

SECT. XIV. *And be it further enacted by the authority aforesaid,* That whensoever any writ of *habeas corpus*, awarded and granted, either in term or vacation time, for any person so confined or restrained, without a commitment for any criminal or supposed criminal matter, shall be served upon the person or persons so confining

The proceedings upon a writ of *habeas corpus*, when taken out for any person restrained of

1785.

his liberty
without a
warrant of
commitment,
to be the
same as in
other cases.

Penalty.

Penalty un-
der this act
to be sued
for within
two years.

The general
issue, and
the special
matter, to be
given in evi-
dence.

or restraining such party, by being brought to such person or persons, or by being left at the place where the party shall be so confined or restrained, the person or persons so confining or restraining such party shall make return of such writ, and bring, or cause to be brought, the body of such party, according to the command thereof, within the respective times limited, and under the provisions herein before prescribed, and every such person refusing or neglecting so to make return of such writ, or to bring, or cause to be brought, the body of the party, according to the command thereof, within the times respectively limited, and under the provisions herein before prescribed, shall be guilty of a contempt of the court, under the seal of which the said writ shall have issued, and shall also forfeit for the first offence, to the party grieved, one hundred pounds, and for the second offence two hundred pounds, to be recovered by him or her, his or her executors or administrators, against the offender, his or her executors or administrators, in manner aforesaid.

SECT. XV. *Provided always, and be it further enacted by the authority aforesaid,* That no person shall be sued, impleaded, molested or troubled, for any offence against this act, unless such person be sued or impleaded for the same within two years after the time wherein the said offence shall have been committed, in case the party grieved shall not be then in prison, or confined or restrained as aforesaid, and if the said party shall be then in prison, or so confined or restrained, then within two years after the decease of the person imprisoned, or so confined or restrained, or his or her delivery out of prison, or from such confinement or restraint.

SECT. XVI. *And be it also enacted by the authority aforesaid,* That in or upon any action, suit, bill, plaint, or information, for any offence against this act, the defendant or defendants may plead the general issue, and give the special matter in evidence.

Passed 18th February, 1785.—Recorded in Law Book No. II. page 425. (h)

(h) The writ of *habeas corpus*, is a writ of right, and the proceedings thereon are merely regulated by this act.

By the 11th section of the act of 22d of May, 1722, (vol. 1, page 139,) power is given to the judges of the supreme court, "To issue forth writs of *habeas corpus*, *certiorari*, and writs of error, and all remedial and other writs and process, &c." And, by the 13th sect. (vol. 1, page 140,) generally to minister justice to all persons, and to exercise the jurisdictions and powers thereby granted, as fully and amply, to all intents and purposes whatsoever, as the justices of the court of *King's bench*, *common pleas*, and *exchequer at Westminster*, or any of them, may or can do."

By the 9th section of the first article of the constitution of the *United States*, "The privilege of the writ of *habeas corpus* shall not be suspended unless when in cases of rebellion, or invasion, the public safety may require it."

And by the 14th section of the 9th article of the existing constitution of *Pennsylvania*, it is declared, "That all prisoners shall be bailable by sufficient sureties, unless for capital offences, when the proof is evident, or the presumption great; and the privilege of the writ of *habeas corpus* shall not be suspended, unless, when, in cases of rebellion or invasion, the public safety may require it."

By the 9th section of the "Act to establish the judicial courts of this commonwealth, in conformity to the alterations and amendments in the constitution," passed 13th of April, 1791, (chap. 1564,) "The said president and judges, [viz. president and associate judges of the several courts of common pleas,] shall, from and after the 31st day of August, [then] next, severally have the powers to issue writs of *habeas corpus* in vacation time, and out of term, and to give relief thereupon in the same manner, and as fully, as the

president of any court of common pleas in this commonwealth at present may or can do, by virtue of an act of assembly, entitled "An act for the better securing personal liberty, and preventing wrongful imprisonments."

In the case of the *United States v. Richard Johns* in the circuit court, Pennsylvania district, which was a prosecution on the 2d section of the act of congress of 26th March, 1804, in these words,—“If any person shall, on the high seas, wilfully and corruptly cast away, burn, or otherwise destroy, any ship or vessel of which he is owner, in part or in whole, or in anywise direct or procure the same to be done, with intent or design to prejudice any person, or persons, that hath underwritten, or shall underwrite, any policy or policies of insurance thereon, or if any merchant or merchants that shall load goods thereon, or of any other owner or owners of such ship or vessel, the person or persons offending therein, being thereof lawfully convicted, shall be deemed and adjudged guilty of felony, and shall suffer death.”

The defendant was brought up by *habeas corpus*, before the court, holding an adjourned session, on the 8th of January, 1806, when it appeared that, on the 27th of Dec'r, 1805, he had been committed by the mayor of the city of Philadelphia, “Charged on the oath of Andrew Clarke, with having on the 20th day of August last, or thereabouts, on the high seas, scuttled the schooner *Enterprise* of Baltimore, with intention to defraud the underwriters, as he believes.”

The prisoner's counsel objected, 1st. That the commitment was vague, and did not describe the offence within the words of the act of congress. 2d. That the offence was not committed within the district of Pennsylvania; and no demand having been made for his surrender by the executive of any other state, there was no law to warrant his arrest or detention. 3d. That the evidence was not sufficiently strong to found an indictment against him, and he was entitled, at all events, to be discharged on bail.

It was answered by the attorney of the district, 1st. That whatever might be the formal defects of the original commitment, the court, being now satisfied with the evidence, would remand the prisoner for trial. 2d. That it was not necessary, for that purpose, to give positive proof of guilt; but to shew probable cause for the accusation. 3d. That the case did not come, at all, under the constitutional, or legislative provisions, for the surrender of a fugi-

tive from the justice of another state; but it was the case of a crime against the *United States*, committed on the high seas; when the trial is directed to be in the district where the offender is apprehended.

By the Court, (*Washington and Peters;*) upon a *habeas corpus*, we are only to enquire, whether the warrant of commitment states a sufficient probable cause to believe, that the person charged, has committed the offence stated. We have heard the evidence; and cannot doubt of its sufficiency to that extent. We do not think, that the prisoner ought either to be discharged or bailed. He must be remanded for trial. 4 Dallas, 412.

Hecker v. Jarrett.

This was an action of debt to recover the penalty of £ 500 imposed by the *habeas corpus* act upon any one who shall, without the order and process of a court having jurisdiction of the cause, knowingly re-commit or imprison a person for the same offence, or supposed offence for which he has been once delivered on a *habeas corpus*.

The declaration stated, that the plaintiff was arrested by virtue of an execution issued by the common pleas of Northampton county, and directed to the defendant who was the sheriff of that county; that he was brought by *habeas corpus* before one of the associate judges of said court, and by the said judge was discharged from imprisonment; and, that the defendant, knowing the same, arrested him, and committed him a second time to prison, without any legal order of the court of common pleas of the said county, or any process issuing out of the same, other than the writ of execution aforesaid; by reason whereof action accrued to the plaintiff to demand and have of the defendant £.500, &c. To this declaration the defendant demurred, and the plaintiff joined in demurrer.

After argument, the following judgment was delivered by

Tilghman, C. J. The *habeas corpus* act contains distinct provisions for the relief of persons imprisoned for criminal and for civil matters. The 1st twelve sections relate to criminal matters. The 8th section imposes a penalty of £.300 on any judge or justice who shall refuse or neglect to award any writ of *habeas corpus* required to be granted by the act. The 9th section imposes on officers, sheriffs, gaolers, &c. to whom writs of *habeas corpus* shall be directed, and who shall refuse or neglect to make return, or to bring the body of the prisoner accord-

1785. ing to the command of the writ, a forfeiture to the party grieved of £. 100 for the first offence, and for the second, £. 200, and also an incapacity on the officer to hold his office. The 10th section imposes the like forfeiture and incapacity on officers, refusing to deliver, upon demand, a copy of the warrant of commitment and detainer of any prisoner. The 11th section enacts, that no person who shall be delivered on any *habeas corpus*, shall be again committed or imprisoned for the same offence, by any person whatever, other than by the legal order and process of such court wherein he is bound by recognition to appear, or other court having jurisdiction of the cause, and that any person, who shall knowingly recommit or imprison such person for the same offence, or supposed offence, shall forfeit to the party grieved £. 500.

It is very clear that this 11th section relates solely to the cases of persons confined for criminal or supposed criminal matter; because it makes no mention of any persons but those who are committed for offences.

The 13th section extends "all the provisions before made for the awarding and granting writs of *habeas corpus* and proceeding thereon, in case of commitment or detainer for any criminal or supposed criminal matter, to persons, not being committed or detained for any criminal or supposed criminal matter, but confined or restrained of their liberty, under any colour or pretence whatever;" and the same section goes on to provide, that upon a certain oath being taken, "a *habeas corpus* shall be awarded and granted in the same manner and under the same penalties, to be recovered from the same persons as is herein before directed."

It is contended by the plaintiff, that under the general words of the 13th section, all penalties of every kind imposed on any persons in any cases whatever, by any of the preceding sections, are extended to civil cases. The most general words in the 13th section, are those which mention "all provisions before made for the awarding and granting writs of *habeas corpus*, and proceeding thereon." Had the provision respecting civil matters stopt there, there might have been some ground for the argument, that the intent of the law was to extend the same penalties which had been imposed in criminal matters, to all persons, and all cases, in civil matters. But it is evident that such was not the opinion of the legislature, because in a subsequent part of the same section a *habeas corpus* is ordered to be awarded and granted in the same

manner and under the same penalties, to be recovered from the same persons as is before directed. Now if the first part of the section had been sufficient to extend all penalties in all cases, the latter part extending one of the penalties in a particular case, would have been not only unnecessary, but improper. But to make the matter still clearer, the 14th section goes on to provide particular penalties in other particular civil cases: that is to say, in cases of writs of *habeas corpus* not being returned, or the bodies of prisoners not being produced by the persons to whom the writs are directed; but there is a total omission of any penalty for imprisoning a person a second time for the same cause for which he had been before imprisoned and discharged.

If it is asked why a penalty should not be inflicted upon a second imprisonment in a civil, as well as in a criminal case, it is sufficient to answer, that the case being omitted, the penalty cannot be inflicted, even supposing that such omission was by accident, and without reason. But there may have been a very good reason why this penalty was designedly omitted in civil cases. It is this; that the object of the *habeas corpus* act was to protect the liberty of individual citizens; and the danger of oppression is not so great in civil matters, as in case of crimes, or supposed crimes. Governments often magnify real crimes, and sometimes impute offences falsely to innocent persons, for the purpose of oppression. From this quarter has generally arisen the danger to liberty; and this might have induced the legislature of *Pennsylvania* to omit the penalty in civil cases. Be that as it may, as they have omitted it, and as it is a well established rule of construction that penalties are not to be imposed without express words, or necessary implication, I am of opinion that the plaintiff is not intitled to recover the penalty of £. 500, upon the case stated in his declaration.

Judgment must be entered for the defendant.

On a *habeas corpus*, where it clearly appears, that a wrong person has been arrested, and deprived of his liberty, the court will interpose immediately for his relief: But where it is dubious, a jury must decide. *Respublica v. The gaoler of Philadelphia*. In the supreme court, December, 1797. (MSS. Reports.)

Respublica v. Levi Arnold, Benjamin Arnold and James Arnold, circuit court, Fayette county, October, 1801, before Yeates and Smith, Justices. (MSS. Reports.)

On motion for a *habeas corpus*, the deposition of *Levi Arnold* was read; stating, that on the 3d of February, 1801, *Benjamin Arnold* and himself were committed to the gaol of *Fayette* county, on suspicion of burning the barn of *Nathaniel Breeding*, esq. or being accessories thereto, and that *James Arnold* was admitted to bail; that at the March sessions following, an indictment was found by the grand jury against *Joseph Cairns*, as principal in the said Arson, and against himself, and the other two defendants, as accessories before the fact, in the court of general quarter sessions of the peace. That a precept for holding a court of *Oyer and Terminer* and general gaol delivery, issued to the June sessions following, when the defendants were ready for their trials with their witnesses; but that *Cairns*, the principal, not being taken on the process, the indictment was continued, and the defendants admitted to bail; that another court of *Oyer and Terminer* was held in *September* sessions following, when the defendants were again ready for trial, with their witnesses; but *Cairns* having fled, the trial was postponed, and the defendants again entered into recognizances for their appearance.

The court remarked, that application should be made to the justices of *Oyer and Terminer* for relief; if there was no prospect of apprehending the principal, and no special circumstances could be shewn against the defendants, such as concealing of the principal, or keeping him, or the witnesses out of the way, they would certainly discharge the defendants from bail, as was done in the case of *James Young* and *Jack*, in *Franklin* county; or, if they deemed them to be dangerous characters, they would bind them over to the peace.

The counsel on both sides answered, that this application had been made and refused; and that they had been expressly referred to this court, by the justices of *Oyer and Terminer*, at their last sessions.

Several depositions were then read, tending to shew on the part of the defendants, their innocence, and the improbability of the charge made against them; and on the part of the commonwealth, that the defendants had threatened the state witnesses, and assisted in the escape of *Cairns* the principal, from justice.

For the defendants, it was moved, that a *habeas corpus* might issue to the bail, that they might be discharged from their recognizances. The defendants were, in a legal sense, under actual confinement and restrained of their

liberty; their bail might surrender them.

The 3d section of the act of 18th of February, 1785, expressly directs, that if a person committed for treason or felony shall not be tried the first sessions after his commitment, he shall on the last day of the sessions be admitted to bail, unless it shall appear, that the witnesses for the commonwealth could not then be produced; and if he shall not be tried at the second sessions, unless the delay happens on his application, or with his consent, he shall be discharged from imprisonment. This law is obligatory on the court, and takes away all discretion; it is couched in strong terms; "It shall and may be lawful for the justices, and they are hereby required, &c." Should a defendant be guilty of improper practices by tampering with witnesses, or preventing their appearance to give evidence, he is obnoxious on that score to a prosecution for the misdemeanor, but is legally intitled to a discharge from the crime laid against him. Here the indictment originated in the quarter sessions, and two sessions of *Oyer and Terminer* have passed over without bringing the defendants to trial.

In opposition to this, it was said, that here there had been no oppression, or unreasonable delay on the part of the state. It is a well known principle of law, that accessories cannot without their consent be tried before the principal. They have refused that consent, and therefore have no grounds to complain of the delay.

The 3d section of the act extends only to principals, and not to accessories. The words are "if any person shall be committed for treason or felony, &c." Nor does this part of the act, (which is borrowed from the British statute of 31 Car. 2, c. 2, called the *habeas corpus* act,) refer to any other cases, then where the party applying is in gaol, in actual custody. The first section runs "if any person shall be, or stand committed or detained for any criminal or supposed criminal matter, &c." the *habeas corpus* is to be directed to the person in whose custody, the prisoner is detained, there is to be a payment or tender of the charges of bringing the said prisoner, &c. the word *prisoner* being used throughout this section, and also in the 2d and 3d sections.

Besides, it has been proved by the depositions, that highly improper threats have been thrown out by the defendants against the witnesses on the part of the prosecution: and there are strong colourable grounds to believe, that they have aided in the escape of

1785.

1785. the principal offender. Under such special circumstances, the court of *Oyer and Terminer* clearly possessed the power of continuing the parties under recognizance.

By the Court. There can be no difficulty in saying, that if principals, the superior offenders, are intitled to the benefits of the law of 1785, the accessories, who are in inferior grades of criminality, must have the same pretensions.

Yeates, J. was of opinion, that the second objection on the part the commonwealth, was well founded. The provisions in the first twelve sections of the law of 1785, all go to the cases of persons committed or detained for any criminal, or supposed criminal matter, to prisoners in actual custody of some officer of justice. The 13th and 14th sections are not to be found in the British statute of 31 Car. 2, c. 2, and are valuable improvements of the rights and liberties of citizens; but they do not respect commitments for criminal matters. The 3d section of the act directs, that the justices of *Oyer and Terminer*, shall, on the last day of the term, next after the commitment of the party, who shall not be indicted and tried, set at liberty the said prisoner, upon bail, &c. This clearly shews, that the legislature did not contemplate a party admitted to bail, as a prisoner under commitment, besides confining the authority and requisition so to act, solely to the court,

before whom the prisoner is to receive his trial. Would not a *habeas corpus* directed to the bail of a supposed offender, be perfectly novel? Could we, or either of us, do an act, which would amount to a legal discharge of the recognizances in the court of *Oyer and Terminer*?

Smith J. said, that the inclination of his mind was, that the *habeas corpus* would not lie to the bail, but declined giving any decided opinion on the point.

By the Court. We have no doubt of the powers of the court of *Oyer and Terminer* of retaining the defendants under bail, to answer the indictment, if their minds were satisfied, either that the witnesses were kept out of the way by the procurement, or threats of the defendants, or that they had prevented the arrest of the principal. It would be monstrous to suppose, that the parties by their own improper conduct, should elude the punishment for a superior offence, by subjecting themselves to a prosecution for a misdemeanor. We must refer the defendants to the court of *Oyer and Terminer*, who are best acquainted with the circumstances of the case: there they will not be treated with oppression; but if the public interests and safety require it, they will administer that preventive justice, which the laws of the government empower them to exercise. *Motion denied.*

CHAPTER MCXXIV.

An ACT to incorporate the Presbyterian congregation in Abington township, in the county of Montgomery.

Passed 22d February, 1785.—Private Act.—Recorded in Law Book No. II. page 425.

CHAPTER MCXXV.

An ACT for erecting part of the county of Lancaster into a separate county.

SECT. I. WHEREAS the inhabitants of the upper parts of Lancaster county have, by petitions, set forth to the General Assembly of this state, that they have long laboured under many inconveniences, from their being situated at so great a distance from the seat of judicature in said county, and have prayed that they may be relieved from the said inconveniences, by erecting them into a separate county. And as it appears but just and reasonable that they should be relieved in the premises;

SECT. II. Be it therefore enacted, and it is hereby enacted, by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same, That all that part of Lancaster county, lying within the bounds and

limits herein after described, shall be erected into a separate county, 1785.
 that is to say ; beginning on the west side of the river Susquehanna, opposite to the mouth of Conawaga creek ; thence up the middle of the said creek, to Moor's mill ; and from thence to the head of said creek ; and from thence, by a direct line, to the south-east corner of Heidelberg township, where it strikes the Berks county line ; thence north-west, by the line of Berks county, to Mahantango creek ; thence along the same by the line of Northumberland county, and, crossing the river Susquehanna, to the line of Cumberland county ; thence down the Susquehanna, on the west side thereof, by the line of Cumberland county, and that part of the line of York county, to the place of beginning, on the west side of the river Susquehanna ; to be henceforth known, and called, by the name of "Dauphin county."

of Dauphin county.

SECT. III. *And be it further enacted by the authority aforesaid,* That the inhabitants of the said county of Dauphin shall, at all times hereafter, enjoy all and singular the jurisdictions, powers, rights, liberties and privileges whatsoever, which the inhabitants of any other county of this state do, may, or ought to enjoy, by the constitution and laws of this state.

Rights and privileges of the new county.

SECT. IV. *And be it further enacted by the authority aforesaid,* [That the district elections for the said county of Dauphin shall be held, for the townships of Derry and Londonderry, at Hummel's town, in the township of Derry aforesaid ; for the township of Upper Paxton, on the north side of Peter's mountain, at Peter Hoffman's, in said township ; for the township of Lower Paxton, on the south side of Peter's mountain, and West Hanover, at the court-house of the said county, or at John Harris's until such court-house shall be erected ; and for the townships of Lebanon, East Hanover, Heidelberg and Bethel, at the town of Lebanon, in the said township of Lebanon] where they shall elect, at the times, and under the regulations stipulated and directed by the constitution and laws of this state, [a Counsellor.] Representatives to serve them in General Assembly, [Censors,] Sheriffs, Coroners and Commissioners ; which said officers, when duly elected and qualified, shall have and enjoy all and singular such powers, authorities and privileges, with respect to their said county, as such officers, elected in and for any other county, may, can, or ought to do. And the said elections shall be conducted in the same manner and form, and agreeable to the same rules and regulations, as now are, or hereafter may be, in force in the other counties of this state.

Elections in the new county, how and where, and for what officers, to be held.

[Supplied by the act of September, 1785.]

SECT. VI. *And be it further enacted by the authority aforesaid,* That the Justices of the Supreme Court of this state shall have like powers, jurisdictions and authorities, in the said county of Dauphin, as in the other counties of this state, and are hereby authorized and empowered to deliver the gaols of the said county of Dauphin, of capital and other offenders, in like manner as they are authorized to do in other counties of this state.

Jurisdiction of the Supreme Court in the new county ;

SECT. VII. *And be it further enacted by the authority aforesaid,* That the Justices of the courts of Quarter Sessions and Common Pleas, now commissioned, within the limits of the county of Dauphin, and those that may hereafter be commissioned, or any three

and of the Quarter Sessions, and Common Pleas.

1785. of them, shall and may hold courts of General Quarter Sessions of the peace and Gaol Delivery, and county courts for holding of Pleas, and shall have all and singular such powers, rights, jurisdictions and authorities, to all intents and purposes, as other Justices of the courts of General Quarter Sessions, and Justices of the county courts for holding of Pleas, in the other counties of this state, may, can, or ought to have in their respective counties, which courts shall sit and be held for the said county of Dauphin, near Harris's ferry, [on the third Tuesdays in the months of February, May, August and November,] yearly, for the despatch of the public business of the said county.

Trustees to
take assu-
rance of a lot
for county
buildings.

SECT. VIII. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful to and for Jacob Awl, Joshua Elder, Andrew Stewart, James Cowden, and William Brown, of Paxton, or any three of them, to take assurance to them, and their heirs, of such lot or piece of ground, as shall be laid out and approved of by the said commissioners, or any three of them, for the erecting a court-house and gaol thereupon, in trust and for the use of the inhabitants of the said county of Dauphin, and thereupon to erect a court-house and prison, sufficient to accommodate the public service of the said county.

who shall
give like of-
ficial sure-
ties.

SECT. XIII. *And be it further enacted by the authority aforesaid,* That [the Sheriffs, Treasurers, collectors of excise, and] all such officers, as have heretofore usually given bail for the faithful discharge of their respective offices, who may hereafter be appointed or elected in the said county of Dauphin, before they or any of them, shall enter upon the execution of their respective offices, shall give sufficient security, in the like sums, in the like manner and form, and for the like uses, trusts and purposes, as such officers are obliged by law, for the time being, to do in the county of Lancaster.

Passed 4th March, 1785.—Recorded in Law Book No. II. page 430. (i)

(i) The sections omitted in this act are entirely obsolete.

§ 5. Apportioned the representation between Dauphin and Lancaster, which was temporary.

§ 9 & 10. Provided for the mode of defraying the expenses of the public buildings, and the limitation of the amount thereof.

§ 11 & 12. Provided for the continuance of the process depending in Lancaster county, and the exercise of the duties of the public officers of Lancaster in and over the new county, until the like officers should be appointed therein.

§ 14. Commissioners appointed to run the boundary lines of the new county.

See the act to appoint and authorize trustees to build a court-house, and offices for the preserving the records of the county of Dauphin, on the lot of land laid out for that purpose in the borough of Harrisburg, and to appropriate the money now in the treasury of the said county, with the emoluments

of the Harrisburg ferry, to discharge the expenses thereof. Passed 5th of April 1793. (chap. 1653.)

By the last enumeration the county of Dauphin contains four thousand seven hundred and seventy-nine taxables. And by act of Assembly of 21st of March, 1808, (chap. 2931,) apportioning the representation in pursuance thereof, this county sends three members to the house of representatives, and one member to the senate.

By an act passed September, 1785. (chap. 1164.) The county of Dauphin was divided into four election districts. The 5th district established 19th September, 1786, (chap. 1231.)

By an act passed 27th of September, 1788. (chap. 1351.) The sixth election district established.

The 7th election district established by act of 12th of February, 1795, (chap. 1782.)

The 8th election district established by act 27th of March, 1795, (chap. 1804.)

The place of holding elections in the

4th district, altered by act of 27th of February, 1798, (chap. 1954.)

The 9th district established by act of 8th of April, 1799, (chap. 2050. § 19.)

A new district, part of Londonderry, and the whole of Anvil township, established 31st of January, 1801, (chap. 2156.)

Halifax District established, and the places of holding elections in Middle and Upper Paxton, altered, 16th of March, 1803, (chap. 2334.)

Londonderry township, made a separate district, 3d of April, 1804, (chap. 2507, § 6.)

East-Hanover township erected into a separate district, and part of West-Hanover annexed to the 2d district, 11th of April, 1807, (chap. 2856. § 13, 14.)

Upper Paxton divided into two districts, and part of *Bethel* township constituted a separate district, 28th of March, 1808, (chap. 2972. § 28, 29.)

By the judiciary act of 24th of February, 1806, the counties of Lancaster, York and Dauphin, compose the second

district. The courts are held in York on the first Mondays in January, April, August and November; in Lancaster on the second Mondays after the commencement of the courts in York, and in Dauphin on the second Mondays after the commencement of the courts in Lancaster.

The term in Dauphin county, continues two weeks, by an act passed 28th of March, 1808, (chap. 2973,) and civil causes may be tried during the first week.

Dauphin county is part of the Lancaster district of the supreme court, by the act of March, 11th, 1809.

The quarter sessions in Dauphin county, may be continued during the whole of the first week of the term, by an act passed 10th of March, 1810.

By an act passed 21st of February, 1810, the seat of government of the commonwealth is established at Harrisburg in the county of Dauphin, in the month of October, 1812.

CHAPTER MCXXVI.

An ACT for furnishing the quota of this state towards paying the annual interest of the debts of the United States; and for funding and paying the interest of the public debts of this state. (k)

SECT. XXXIII. *PROVIDED* nevertheless, That all lands which have been, or may hereafter be, granted within this state, to any officers or soldiers of the line of this state, by virtue of any resolution of Congress and law of this state, as a reward for their ser-

Donation
lands, not
alienated,
exempted
from taxes.

(k) By the former part of this act, which has been repealed, the revenues of the state were formed into an aggregate fund, for the purpose of discharging the following engagements:—1st. The instalments of the legislative grant to the late proprietaries, as they became due, (chap. 1084, 1119.)—2d. The state's estimated quota of the annual interest of the aggregate debt of the United States, contracted during the late war, amounting to £. 123,932, which sum was directed to be transferred by the executive into the hands of the continental Loan-Officer, yearly, and every year, after the termination of the year 1784, to be applied to the payment of the interest on such continental certificates as were originally issued to the citizens of this state, or to the officers and soldiers of the Pennsylvania line, or quota of troops, &c.—3d. The interest for one year on all debts due from, and assumed by this state, and liquidated ascertained and certified, according to law (debts funded on the excise, and other certificates of depreciation of pay,

excepted,) to be paid by the treasurer, yearly, and every year.—4th. The arrearages of interest on the state debts, whenever there remained in the aggregate fund a residuary sum of £. 15,000. And, in order to strengthen and establish the aggregate fund, thus created, the act also provided that a tax of £. 76,945 17s 6d. should be assessed, raised and levied, from the estates real and personal, and persons in the city and counties, yearly, and every year, successively, after the year, 1785. By an act of the 1st of March, 1786, a loan was open to receive continental in exchange for state certificates, commonly called new loan certificates (which was the origin of the funding system of Pennsylvania) and for paying for the payment of the interest on such new loan certificates, &c. By an act of the 8th of March, 1786, so much of the law in the text, as related to the paying of the £. 123,932, annually, to the continental Loan-Officer, and his distribution of the same, was repealed, and a provision made to pay the balances,

1785.

vices, shall be and remain exempted from taxation for and during the life of such officer or soldier, respectively, unless the same shall be transferred or aliened to any other person, according to the true intent and meaning of an act of the General Assembly, passed first day of March, one thousand seven hundred and eighty, entitled "An Act for the more effectual supply and honourable reward of the Pennsylvania troops, in the service of the United States of America."*

* Vol. I. pa.
469.

SECT. LII. By this section £. 150,000, in bills of credit were directed to be prepared and emitted, and the denominations of the different bills was prescribed.

By SECT. LIII. The oath or affirmation of the trustees, was pre-

due on the pecuniary requisitions of Congress. By an act of 28th of March, 1787, the Comptroller was directed to receive, on loan, the continental Loan-Office certificates issued in the states of New-Jersey and Delaware, upon loans made by persons who were, at the time of making the same, and continue, citizens of Pennsylvania; and the parties claiming that benefit are required to make oath or affirmation, that the certificates offered are, *bona fide*, the property of the persons to whom they were originally granted. By an act of the 27th of March, 1789, it was declared, that the interest on the new loan certificates should be paid, so as to complete the payment of interest to four years; but that so much of every act, as directs or secures the payment of the principal or interest of such certificates, beyond the term of four years, shall be void; the executive was authorized, on application of the holders, to direct the re-exchange of the continental for new loan certificates, the interest being first equalized on the respective certificates, and the balance paid in indents; but which, by an act of 30th day of September, 1791, was allowed to be done in three per cent. stock. By an act of the 1st of April, 1790, further regulations were made respecting the re-exchange of the continental and new loan certificates. By an act of the 8th of December, 1789, the annual tax of £. 76,945 17s 6d. was suspended for one year; the suspension was protracted for another year by an act of the 6th of April, 1791; and by an act of the 9th of the same month, so much of the act in the text, (including all but the 33d, from the 22d to the 51st section,) and of every other act, as authorized the assessing, levying and collecting the tax, was repealed, with a proviso, that the repeal should not prevent the collection of the arrearages due on the 31st of December, 1790, or prevent the levying and collecting county rates and levies, taxes for the relief of the poor, and taxes

for opening and keeping in repair roads and highways.

In pursuance of an act of the 9th day of April, 1791, the legislative grant to the late proprietaries of Pennsylvania has been discharged.—See chap. 1119. And by an act of the 10th day of April, 1792, effectual provision is made for paying all the debts of the state of the following descriptions:—1st. All the certificates issued by the state, upon which an interest of six per cent. per annum is payable, by virtue of any existing laws of this commonwealth, at their nominal value.—2d. All the certificates which were issued by this state, bearing an interest of six per cent. as an equivalent for the loss sustained upon the deferred stock of the United States by the creditors of this state, who subscribed to the loan proposed by Congress, at the rate of thirty-nine pounds, in gold or silver money, for every hundred pounds in the nominal amount of the certificates of deferred stock, on which such additional six per cent. certificates were respectively granted by the state as aforesaid.—3d. All the certificates which were issued by this state, bearing an interest of three per cent. as an equivalent for the loss sustained upon the three per cent. stock of the United States by the creditors of this state, who subscribed to the loan proposed by Congress, at such rate as the same may be purchased; provided the same does not exceed the rate of fifty pounds, in gold or silver, for every hundred pounds in the nominal amount of certificates of the three per cent. stock, on which such additional three per cent. certificates were, respectively, granted by the state as aforesaid.—4th. All and every the bills of credit, commonly called dollar money, remaining in circulation, together with the interest due thereon, at the nominal value and amount of such bills, and of the interest due thereon.—See law book No. II page 434 [and the notes to chap. 959, ante. page 194] (*Note to former edition.*)

scribed; and also their duty respecting the press, and delivery of the bills to the treasurer. 1785.

SECT. LIV. Prescribed the manner in which the bills were to be signed and numbered.

SECT. LV. The trustees were appointed by this section; and also the signers of the bills; and their allowance, respectively, fixed; and the manner in which the expenses were to be paid, prescribed. (An additional number of signers was appointed, by an act passed tenth of September, one thousand seven hundred and eighty-five.)

By SECT. LVI. Fifty thousand pounds were appropriated for opening a Loan-Office; and the residue for the payment of interest on the state debt. (The Loan-Office was established by an act passed fourth of April, one thousand seven hundred and eighty-five, *post.*)

SECT. LVII. The bills were made receivable as gold or silver, in payments to the state, &c.

SECT. LVIII. *And be it enacted by the authority aforesaid, That if* any person or persons shall presume to counterfeit any of the bills of credit, herein directed to be prepared, perfected and issued, by printing, or procuring to be printed, any such bills, of the likeness and similitude of any of the said genuine bills of credit, and if any person or persons shall forge, or procure to be forged, the name or names of any of the signers of such genuine bills of credit, to any such counterfeit bill or bills, whether such counterfeiting or forging be done within this state, or elsewhere, or shall utter any such bill or bills, knowing the same to be so counterfeited as aforesaid, every such person, so offending, and being thereof legally convicted, by confession, standing mute, or by verdict of a jury in the Supreme Court, or court of Oyer and Terminer, shall suffer death, without benefit of clergy. And if any person or persons shall counterfeit any of the said bills of credit, by altering the denomination thereof, with design to increase the value of the same, or shall utter any of the said bills, knowing them to be so counterfeited or altered as aforesaid, and shall be legally convicted thereof as aforesaid, every such person, so convicted, shall be sentenced to the pillory, and to have both his or her ears cut off, and nailed to the pillory; and moreover, every such offender shall forfeit the sum of one hundred pounds, to be levied on his or her lands and tenements, goods and chattels, one half thereof to the use of the commonwealth, and the other half to the use of the person or persons, who shall make discovery of such offence, and prosecute such offender to conviction.*

Counterfeiting the bills, or forging the names of the signers, or uttering the bills knowing them to be counterfeited, is a crime punishable with death.

Altering the denominations of the bills, or uttering them, knowing them so to be altered, how punishable.

[* Punishment altered by chap. 1766.]

SECT. LIX. By this section, £.20,000 of the bills, were directed to be annually cancelled. (And an act passed twenty-seventh of November, 1787, provides for cancelling all the bills of credit which should be received into the Loan-Office, on account of mortgages.)

SECT. LX. Established the compensation of the treasurer under this act.

Passed 16th March, 1785.—Recorded in Law Book No. II. page 434. (1)

(1) By the third section of an act passed 4th of April, 1805, (chap. 2611, fore made, for the redemption of the bills of credit of this commonwealth, it is enacted as follows; Whereas sufficient time hath been al-

1785. of 1781 and 1785. Therefore, be it enacted, &c that such of the said bills of credit as are now outstanding, as shall not be paid into the state treasury under the laws heretofore enacted, on or before the second Tuesday of January next (1806,) shall not thenceforth be received by the state treasurer, but shall for ever be irredeemable; any law or laws now in force to the contrary notwithstanding."

CHAPTER MCXXVIII.

An ACT for directing the mode of distributing the donation lands, promised to the troops by this commonwealth.

SECT. I. WHEREAS the General Assembly, by a resolution, passed the seventh of March, one thousand seven hundred and eighty, did resolve upon certain allowances of land to be given by this state to the officers and privates of the Pennsylvania line, as therein particularly specified: And whereas, by an act of Assembly passed the twelfth day of March, one thousand seven hundred and eighty-three, a certain tract of country, therein described, was located and set apart, exclusively, for the purpose of fulfilling the aforesaid grant: Therefore, in order that the persons to whom the said allowances were made may have the same distributed to them respectively, and legal titles granted, vesting in them the right thereto:

Deputy-Surveyors to be appointed, to lay off the donation tract of land into districts.

SECT. II. *Be it enacted and it is hereby enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same,* That the Surveyor-General shall forthwith appoint deputies, such as shall be approved of by the Supreme Executive Council, for the purpose of surveying and laying off in lots the said tract of country; which deputies shall, severally, give bond to the state, with sufficient security, in the sum of eight hundred pounds, conditioned for the faithful performance of the duties of their office, and shall follow such directions and instructions, as they may, from time to time, receive from the Executive Council and Surveyor-General.

SECT. III. And whereas difficulties may arise in determining the cases to which the said grant of lands, by the aforesaid resolution, shall extend, and whether the same doth also include the grant of lands promised to the army by Congress.

Who shall be entitled to donation lands.

SECT. IV. *Be it further enacted by the authority aforesaid,* That all officers and soldiers of the Pennsylvania regiments, or of independent corps, acknowledged by this state as of the quota of Pennsylvania in the federal army, and officers, being citizens of this state at the time of their entering into the service, not attached to the line of any state, who have served therein until the end of the late war with Great-Britain: and all officers, as aforesaid, who have been deranged by the regulations and arrangements of the army, according to the act of Congress, passed October, one thousand seven hundred and eighty, or at any subsequent period of the war, together with the widows and children, or either thereof, of such officers and privates aforesaid, as were slain in battle, or died in the service, shall be, and they are hereby entitled to lands, according to the pay and rank they held last before they left the said service, in the proportions laid down in the resolution aforesaid.

SECT. v. And whereas the General Assembly, by their resolutions of the twenty-first of March, one thousand seven hundred and eighty-three, did declare, that the honourable the Baron Steuben, late Inspector-General of the American army, should be entitled to receive from this state a grant of lands, equal to a Major-General of the Pennsylvania line, and that Lieutenant-Colonel Tilghman should be entitled to a grant of lands, equal to a Lieutenant-Colonel of the same line. And whereas, by resolutions of Assembly of the twenty-first of February, one thousand seven hundred and eighty, and the twenty-third of December, one thousand seven hundred and eighty, and by an act of Assembly passed the twenty-second day of December, one thousand seven hundred and eighty-one, the troops therein directed to be raised were promised like proportions of land with the Pennsylvania line :

1785.

SECT. vi. *Be it therefore enacted by the authority aforesaid,* That the said Major-General Baron Steuben, Lieutenant-Colonel Tilghman, and the aforesaid officers and soldiers of the troops, raised by virtue and in pursuance of the aforesaid resolutions of the twenty-first of February and twenty-third of December, one thousand seven hundred and eighty, and the aforesaid act of the twenty-first day of December, one thousand seven hundred and eighty-one, shall also be, and they are hereby, entitled to lands, according to the pay and rank they respectively held last before they left the service, in the proportions aforesaid.

Other persons, on particular circumstances, to be entitled.

SECT. vii. *And be it enacted by the authority aforesaid,* That the said grant of lands by this state shall not include the donation of lands promised by Congress as aforesaid, nor shall it be construed so as to affect or invalidate the claim of the said troops thereto.

The grant of the state not to affect any grant promised by Congress.

SECT. viii. *Provided nevertheless,* That no person shall be entitled to any lands, agreeable to this act, by virtue of any promotion or rank obtained by brevet or other commission, unless he hath actually been allowed pay agreeable thereto by the United States.

Lands not to be given by rank upon brevet only.

SECT. ix. *And be it further enacted by the authority aforesaid,* That the Comptroller-General of this state shall, and he is hereby directed forthwith to form complete lists of the persons entitled to receive lands, agreeably to this act, annexing thereto their rank, and the quantity to which they are respectively entitled, and shall lay the same before the Supreme Executive Council, who shall thereupon give orders to the Surveyor-General, that he may instruct his deputies what number of lots to survey, and in what quantities to lay them off.

The Comptroller to furnish the Executive with a complete list of persons entitled to donation lands.

SECT. x. *And be it further enacted by the authority aforesaid,* That the lots shall be of four descriptions, one to contain five hundred acres each, another three hundred acres each, another two hundred and fifty acres each, and another two hundred acres each, with the usual allowances; that a quantity equal to what may be necessary for the Major-Generals, Brigadier-Generals, Colonels, Captains, and two thirds of the Lieutenant-Colonels, shall be laid off into lots of five hundred acres; a quantity equal to what may be necessary for the regimental Surgeons and Mates, also for the Chaplains, Majors and Ensigns, into lots of three hundred acres each; a quantity equal to what may be necessary for one third of the Lieutenant-Colonels, and for the Sergeants, Sergeant-Majors, and

The lots of land to be divided into four descriptions, containing different quantities.

1785. Quarter-Master-Sergeants, into lots of two hundred and fifty acres ; and a quantity equal to what may be necessary for the Lieutenants, Corporals, Drummers, Fifers, Drum-Majors, Fife-Majors and Privates, into lots of two hundred acres each ; and that the Surveyor-General, and every of his deputies, respectively, shall, before they proceed to the execution of the duties prescribed by this act, take and subscribe an oath or affirmation, that, in laying off the lots as aforesaid, he will not choose out the best land, either as to quality or situation, to favour any one of the foregoing four classes of lots, to the prejudice or injury of the others, nor of this state ; and in running the boundary lines of the lots, the Surveyors, respectively, shall cause the same to be well defined, by marking the trees on the lines at small distances, and particularly the angles and corners, and on the northwestern corner tree of each lot shall be marked, in Roman figures, the number of the lot, and if the said corner should be a post, then the said number to be marked on a tree in said lot, most contiguous thereto, and shall transmit copies of their field notes, with the draughts and returns, into the Surveyor-General's office.

Qualification of the Surveyor and his deputies, respecting an inquiry into the quality of the lands and the boundaries.

Deputies to number the classes of lots numerically.

SECT. XI. *And be it further enacted by the authority aforesaid,* That the Surveyor-General shall give such instructions to his several deputies, concerning the numbering of the classes of lots, respectively, as that they may succeed each the other in numerical order, and that each of the said classes shall commence with the number one, and proceed on numerically, and that no two of the same class of lots shall bear the same number.

When the lots are laid off, a draft shall be made of the whole ; and when all applications are satisfied, be deposited in the Rolls-office.

SECT. XII. *And be it further enacted by the authority aforesaid,* That when a sufficient number of lots shall be surveyed, and returned to the Surveyor-General, he shall cause a draft to be laid down of the whole, noting on each the number thereof, which shall be kept by the Supreme Executive Council, until after all the applications, agreeable to this act, shall have been satisfied, and afterwards shall be safely deposited in the office of the Master of the Rolls, as a public record, to serve, to all intents and purposes, in lieu of recording the patents, any law, custom or usage, to the contrary notwithstanding.

The mode of distributing the same by lottery, according to the rank of the party.

SECT. XIII. *And be it further enacted by the authority aforesaid,* That the Supreme Executive Council shall cause numbers, correspondent to each of the four classes, to be made on pieces of square white paper, as nearly of an equal size as may be, and the said numbers separately and carefully, in their presence, to roll and bind up well with silken thread, as uniformly as possible, and deposit the same in four wheels, like unto lottery wheels, to be by them provided at the expense of the state for that purpose, which wheels shall be well turned round, before any applicant shall be permitted to draw therefrom, and the same shall be frequently afterwards repeated ; that the said wheels shall be kept in safe custody, under the direction of a committee of three of the members of the Supreme Executive Council, to be chosen by the Board from time to time, and sealed, except when drawn from ; that the said committee shall judge and determine on the right of every applicant to receive grants of land under this act, allowing an appeal to the Supreme Executive Council, in all cases of doubt and difficulty, whose decision thereon shall be

final and conclusive, and having approved thereof shall admit each applicant, by himself or order, (except in cases where alienation is prohibited before the distribution of the lands,) if a Major-General, to draw four tickets from the wheel containing the numbers on the five hundred acre lots; if a Brigadier-General, three tickets from said wheel; if a Colonel, two tickets from said wheel; if a Lieutenant-Colonel, one from said wheel, and one from the wheel containing the numbers on the two hundred and fifty acre lots; if a Surgeon, Chaplain or Major, two tickets from the wheel containing the numbers on the three hundred acre lots; if a Captain, one ticket from the wheel containing the numbers on the five hundred acre lots; if a Lieutenant, two tickets from the wheel containing the numbers on the two hundred acre lots; if an Ensign, or Regimental Surgeon's Mate, one ticket from the wheel containing the numbers on the three hundred acre lots; if a Sergeant, Sergeant-Major, or Quarter-Master-Sergeant, one ticket from the wheel containing the numbers on the two hundred and fifty acre lots; and if a Drum-Major, Fife-Major, Drummer, Fifer, Corporal, or private centinel, one ticket from the wheel containing the numbers on the two hundred acre lots.

1785.

SECT. XIV. *And be it further enacted by the authority aforesaid,* That the said committee shall make report, from time to time, to the Supreme Executive Council, of the numbers drawn for or by each applicant, and the President or Vice-President in Council shall then, forthwith, cause to be filled up and sealed with the state seal, and signed and delivered, patents for the lots respectively, corresponding to the number so drawn, which patents shall be provided and printed at the expense of the state, in sufficient quantities, upon parchment, in manner and form following, viz.

The committee to report the numbers drawn to the executive, who shall thereupon issue patents.

THE Supreme Executive Council of the commonwealth of Pennsylvania, to all to whom these presents shall come, Greeting:

Form of the patents.

KNOW ye, that in consideration of the services rendered by _____ in the late army of the United States, (or in the service of this state, as the case may be,) there is granted, by the said commonwealth, unto the said _____ a certain tract or parcel of land, lying in the county of _____ (describing the particular bounds of the land, and the number it bears,) with its appurtenances, unto the said _____ his heirs and assigns, for ever, (here insert the usual tenure and reservation.) In witness whereof his Excellency _____ Esq. President, (or, if absent, the Honourable _____ Esq. Vice-President,) of the Supreme Executive Council, hath hereunto set his hand, and caused the state seal to be affixed, the _____ day of _____ in the year of our Lord _____ and _____ of the commonwealth.

Attest, _____ Secretary.

And the Supreme Executive Council shall insert in the general draught, and within each lot, the name and rank of the person for whom it was drawn.

Names to be inserted in the lots.

SECT. XV. *And be it further enacted by the authority aforesaid,* That the following fees shall be allowed for surveying, draughting and returning, as herein before directed, and no other, that is to

Fees allowed for surveying.

1785. say; for every lot of five hundred acres, three pounds; every lot of three hundred acres, two pounds; every lot of two hundred and fifty acres, and every lot of two hundred acres, one pound ten shillings; which allowance shall include all expenses of chain-bearers, markers, and other charges, to be paid by each applicant, in proportion to his lands, previous to his being admitted to draw. And whereas the term of two years, limited in the law passed March, one thousand seven hundred and eighty-three, appears to be too short for making all the applications, a considerable part thereof having since elapsed:

The period
for making
applications
extended.

[SECT. XVI. *Therefore, be it enacted, and it is hereby enacted by the authority aforesaid,* That the said term shall be extended, to continue until the expiration of one year after the Surveyor-General shall have returned to Council the draught of the lots laid down, as herein before directed, of which return public notice shall be immediately given by Council, in the newspapers, and the drawing and patenting shall then forthwith commence.]

After the pe-
riod allowed
for applying
is expired
the residue
of the lands
shall be sold,
for the use of
the state.

[SECT. XVII. *And be it further enacted by the authority aforesaid,* That, immediately after the termination of the period allowed for making applications, as aforesaid, the Supreme Executive Council shall cause the remaining lots, and the residue of the lands appropriated as aforesaid, which may not be applied for, to be laid off, advertised and sold, within a reasonable time, under their direction, for the benefit of the state; and that all certificates shall be receivable in payment of the purchase money thereof, which are now receivable at the Land-Office for the purchase money of lands sold by this commonwealth, agreeable to law.]

SECT. XVIII. And whereas the lines of the western and northern boundaries of this state are not yet run, and the lands appropriated for the army, and herein directed to be surveyed, extend thereto: Therefore, in order to avoid interferences, by surveying lands without the lines of this state,

Lands re-
mote from
the western
and northern
boundaries to
be first sur-
veyed.

SECT. XIX. *Be it enacted, and it is hereby enacted by the authority aforesaid,* That the Supreme Executive Council shall direct, in such manner as may be best, that the lands remote from the said boundaries shall be first surveyed, until the said lines shall be run, for the completion of which measures are already taken by the state.

An agent to
be appointed,
to explore
the country
to be laid off.
His duty-

SECT. XX. *And be it further enacted by the authority aforesaid,* That an agent, duly qualified, shall be appointed by the Supreme Executive Council, who shall proceed immediately, and explore the country to be laid off, agreeable to the directions of this act, noting the quality of the land in the several parts thereof, the hills, mountains, waters, creeks, marshes, uplands, bottom land, &c. and such other occurrences as may deserve notice, with their situation and distance, but particularly the parts of the land which he may deem unfit for cultivation.

His quali-
fication and
pay.

SECT. XXI. *And be it further enacted by the authority aforesaid,* That the said agent shall take and subscribe an oath or affirmation, before the Supreme Executive Council, well and truly to execute the business hereby entrusted to him, without partiality or favour, either to the state or any individual, and for his services and ex-

penses herein, he shall be allowed at the rate of one pound and ten shillings for every day he shall be so employed. 1785.

SECT. XXII. *Provided always*, That the length of time charged by him shall not exceed four months; and the Supreme Executive Council shall draw for such part of his pay, to enable him to proceed on the business, as may to them seem proper.

Not to be employed longer than four months, and may be paid in advance.

SECT. XXIII. *And be it further enacted by the authority aforesaid*, That the remarks, notes and description of the country, made by the said agent, as before directed, shall be published as soon as possible, under the direction of the Supreme Executive Council.

His remarks to be published.

SECT. XXIV. *And be it further enacted by the authority aforesaid*, That the Surveyor-General shall appoint such a sufficient number of deputies, in manner aforesaid, as to have the whole tract of country surveyed and returned to him on or before the first of February, one thousand seven hundred and eighty-six: And if any deputy, so as aforesaid appointed, who shall accept thereof, shall not have returned the surveys assigned him within that period, his bond shall be put in suit immediately after, to be recovered by the Attorney-General, for the use of the commonwealth: And the agent to be appointed, as directed by this act, shall also report to the Surveyor-General, from time to time, if any of the deputies neglect, or unnecessarily delay, the performance of their duty.

The whole tract of country to be surveyed by the 1st Feb'y, 1786.

Delinquent surveyors to be sued.

The agent to report to the Surveyor-General.

Passed 24th March, 1785.—Recorded in Law Book, No. II. pa. 464. (m.)

(m.) See chap. 996, ante. pa. 62, the donation district described, sect. 5, and the time for making application fixed by sect. 7. But this has been since extended by various acts, (*vide infra*.)

§ 8. Officers and soldiers not to sell their shares of land until actually surveyed: and every such sale to be null and void, to all intents and purposes.

Donation lands shall be and remain exempted from taxation, for and during the life of the officer and soldier receiving them, unless the same shall be aliened or transferred to any other person. Vol. 1, pa. 489, and ante. chap. 1126, pa. 287.

By a supplement to this act, passed 30th of Sept'r, 1791, (chap. 1581,) after reciting, that since the boundary line between this state, and the state of New-York had been run, it appeared that a number of surveys had fallen within the state of New-York, &c.—The Surveyor-General was directed to ascertain and report to the governor, as soon as might be, what number of patents had been granted for lands of the description aforesaid, had fallen in the state of New-York, together with the number of acres contained in each patent, and the names of the persons who obtained the same; and the governor was requested to cause the same to be printed, and notice to be given to all persons concerned to apply before the 1st of December (then) next, on

which day the Surveyor-General was directed to ascertain by lot, in such manner as should be prescribed by the governor, the order of priority, according to which the persons who should apply should proceed to choose other lands, instead of those they had thus lost.

§ 2. Applicants to choose other lots of like quantity, out of any of the tracts in the donation districts already surveyed, and not otherwise disposed of.

§ 3. New patents to issue without fees; provided no individual should be entitled to receive such patent, until he had previously returned the patent formerly granted to him for lands that had fallen in the state of New-York, that the same might be cancelled, and had also given a quit claim to the commonwealth for any compensation he might be entitled to, on account of his loss.

And by an act passed 10th of April, 1792, (chap. 1633,) all persons who were entitled to the benefit of the above supplement, were allowed to apply for the same before the 1st day of July (then) next.

§ 2. The Surveyor-General's report respecting the patentees in the tenth district, was directed to be reprinted, &c.

And, further, by an act passed 5th of April, 1793, (chap. 1660,) the officers of the Land-Office were directed forthwith to proceed and ascertain, by

1785. lot, a sufficient number of lots, corresponding in the number of acres to the several lots of donation lands which had been drawn by a number of persons, late officers and soldiers, &c. which were found to lie within the state of New-York, &c. and the several persons whose donation lots had fallen into the said state, who had applied and drawn for their priority of choice, agreeably to the manner prescribed by the governor, were entitled to choose a lot or lots containing a like quantity of acres with the lot or lots they had lost, out of any of the lots drawn as aforesaid; and all persons who were entitled to the benefits of the supplement of 30th of Sept'r, 1791, who had not applied before the 1st of July, 1792, and drawn for their priority of choice, were severally entitled to make choice of a lot or lots containing a like number of acres with the lot or lots they may have lost, as they shall apply for the same, and upon such choice being made, patents to issue in the usual form without fees; provided the former patents be returned, and quit claim as aforesaid.

And by an act passed 23d of Feb'y, 1801, (chap. 2183.) The Comptroller-General was directed to furnish to the secretary of the Land-Office, a list of the names of those persons, whose lots fell into the state of New-York, who had received no equivalent; and also a list of the number of lots reserved in lieu thereof, agreeably to the act of 30th of Sept'r, 1791, to which were to be added, eight lots to be taken from the undrawn lots in any district such applicant should choose, not already appropriated, from which lots the said persons should choose other lots instead of those they had lost, and to have priority in the order they applied; provided such application was made within three years after passing this act: And if any fraud should be suspected by the secretary of the Land-Office, or if any difference should arise between applicants, the Board of Property were to investigate and decide as in other cases. And it was made the duty of the secretary of the Land-Office, to call on any attorney applying, to declare on oath or affirmation, that he had no interest in the claim, otherwise than to serve the applicant.

By a supplement to the several acts for distributing donation lands, passed 6th of April, 1792, (chap. 1626.) The land officers were directed, on the 2d day of July (then) next, to draw lots for every person entitled to donation lands, who had not received the same, agreeably to the list submitted by the

Comptroller-General to the Executive Council, in the same manner as if the persons entitled were present, and under the same regulations that were prescribed by the act in the text; save only so far as the same relates to duties to be performed by certain members of the Supreme Executive Council.

§ 2. Patent to issue to applicants within two years from passing this act.

§ 3. Any lands unapplied for within the term of two years to be disposed of agreeably to the regulations of the act for the sale of vacant lands within this commonwealth.

The same provision is contained in the second section of the act of 5th of April, 1793, before cited.

And by the 2d section of the act of 23d of Feb'y, 1801, before cited. The Comptroller-General was directed to furnish the secretary of the Land-Office with a list of the names of all those persons, who had theretofore drawn lots, under the former laws directing the manner of distributing the donation land, and who had not received patents for the same, together with the number of the survey and district which had been drawn opposite to their names; and it was made the duty of the secretary of the Land-Office, on application, to cause patents to issue for the lots respectively corresponding to the numbers so drawn; which patents were to be provided and printed upon parchment, at the expense of the state; and upon any apprehension of fraud, or if any difference should arise between the parties applying, the Board of Property was directed to decide as in other cases.

§ 3. The Board of Property was directed to proceed on all applications made, or to be made, by persons intended to be embraced within the provisions of this act, in the same manner as is directed by the 13th section of the act in the text; and when the lots shall have been so drawn as aforesaid, the secretary of the Land-Office, on application made within the time, and in the manner prescribed by the first section of this act, was directed to grant patents to such persons, under the inspection of the Board of Property, in the same manner as the Executive Council was directed by the above recited act, and without any charge of office fees. Provided that nothing in this act contained, shall be construed so as to defeat or impair any right to donation lands, acquired by persons entitled to the same, who had not yet received any equivalent, and who had applied within the time, and in the manner pre-

scribed by the several acts theretofore passed for the distribution of donation lands.

By an act entitled "An act relative to donation lands," passed April 17th, 1795, (chap. 1844,) the Comptroller-General was directed forthwith to form complete lists of the persons entitled to receive donation lands agreeably to the act in the text, whose names were not included in the list contained and referred to in the last report made by him under the said act, and to annex thereto their rank, and the quantity of land to which they were respectively entitled, and transmit the same to the land officers, or one of them, who were directed to contract with some person to prepare tickets under their inspection, as thereafter directed, for all and every the officers and soldiers entitled to shares in said donation lands, whose lots had not been drawn. And the incidental expenses were provided for.

§ 2. And the person so employed, was to cause numbers corresponding to each of the four classes mentioned and described in the tenth section of the act in the text, to be made on pieces of square white paper, as nearly of an equal size as might be, and the said numbers separately and carefully, in the presence of said land officers, to roll and bind up well with silken thread, as uniformly as possible, and deposit the same in four wheels similar to lottery wheels, to be by the said land officers provided, at the expense of the state, for that purpose, said wheels to be well turned round before any applicant should be permitted to draw therefrom, and the same to be frequently afterwards repeated; the said wheels to be kept in safe custody by the said officers under seal, except when drawing therefrom; the said officers to draw out of said wheels all the tickets for the drawing of which all the said officers and soldiers entitled to draw the same, should not attend for that purpose, by themselves or agents. Provided, that no greater number of tickets be prepared and put into the wheels, than should amount to the number of tickets to which the officers and soldiers should be entitled, who had not theretofore drawn their lots. And the proportion, or number of tickets to be drawn, according to rank, was then prescribed.

§ 3. As soon as the drawing was finished, the said land officers were to make report to the governor of the numbers drawn for, or by, each person entitled to shares of the said donation lands, who was forthwith to cause to be filled up and sealed with the state

seal, and signed and delivered, patents for the lots respectively corresponding to the numbers so drawn, said patents to be provided and printed at the expense of the state, and to be expressed in the form prescribed by the act in the text.

§ 4. The legal representatives of any person deceased were entitled to all the advantages and emoluments of this act, and to draw lots in said lottery in the same manner, and with the like effect, that they might have done if living, and also to have lots drawn for them if absent, in the manner above provided.

§ 5. And as the terms limited by law appeared to be too short, to give opportunity to all persons entitled to shares in said land, to make application for the same, the term was continued for one year after the expiration of this act; persons beyond sea, or out of the United States, at the time of passing this act, to be allowed two years from the passing thereof; and all persons who, at the time of passing this act, were officers or soldiers in the United States army, were to be allowed three years from the passing thereof, to make their claim as aforesaid.

§ 6. After the expiration of the respective periods for making application as aforesaid, *so much of the donation lands, for which no application shall have been made, may be disposed of in such manner, as the legislature shall in future by law direct.*

The time further extended by act of 20th of March, 1797, (chap. 1917.)

Extended to 1st of September, 1799, by act of 11th of April, 1799. (chap. 2070.) By the second section of which act, before any claim was to be allowed, the same was to be presented to the Comptroller General, Register General and State Treasurer, who were to inquire into the lawfulness thereof, and whether the same remained unsatisfied, and thereupon to transmit to the secretary of the Land-Office a certificate, stating that the claim ought to be allowed or rejected, as the case might be, which certificate was to be conclusive.

§ 3. The land-officers were directed to advertise in certain papers the time limited for presenting claims for donation lands, and to proceed after the said 1st of September, to draw lots in favour of all such claimants, as should have duly received as aforesaid a certificate of allowance from the Comptroller General, &c. upon the principles, in the manner and with the powers specified in the act of 17th of April, 1795.

§ 4. On the 1st of May, 1800. The powers herein given were to cease, no

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lots for donation lands were afterwards to be drawn, and the residue of the donation lands were to revert to the state, and be disposed of in such manner, "as SHALL be directed by law in relation to other lands, the property of the state."

Time extended to three years after 23d of February, 1801, by the before cited act of that date, (chap. 2183.)

By an act entitled "An act to complete the benevolent intention of the legislature of this commonwealth, by distributing the donation lands to all who are entitled thereto," passed 2d of April, 1802, (chap. 2276.) The preamble of which states; That some of the late officers and soldiers, &c. had not received their donation lands; and it had been represented, that amongst the lots in the 10th donation district, which the owners had released as being in the state of *New-York*, and for which they had received other lots in lieu thereof, many were still in *Pennsylvania*, and also that a number of lots might still be found within the bounds of the donation surveys, not numbered or returned as donation lots, nor otherwise appropriated.

§ 1. It was made the duty of the land officers to ascertain the number of donation lots returned of each description, which yet remained undrawn and not otherwise appropriated, or which having been drawn, had not been applied for in the time prescribed by law, and to cause numbers corresponding with each lot of the several descriptions, according to the quantity of land allowed to each grade of officers, &c. to be made on separate pieces of paper, as nearly of the same size as might be, to be carefully put in small boxes, equal to the number of different grades which might be yet unsupplied, and on application of each person for their respective donation, the said land officers, after being satisfied of the justice of the claim, were to cause the box containing the tickets representing the quantity of land to which the applicant might be entitled, to be shook, so as to mix said tickets, and to draw or cause to be drawn therefrom, one or more of the numbers so deposited, as should be necessary to complete the quantity which such applicant might be entitled to; and in like manner to proceed on each and every application, and the person first applying to be entitled to the first draft, and immediately after drawing to proceed to issue a patent or patents for the respective lots so drawn, free of all expense, except the enrolling fees; *Provided*, That no lot to be drawn, or patent to be is-

sued in pursuance of this act shall interfere with, or defeat any prior title, which may have been acquired under the authority of any former law.

§ 2. The Surveyor-General was authorized to direct a survey to be made at the expense of the state, so as to ascertain with accuracy, all lots within the 10th district, reported to have fallen into the state of *New-York*, and as such released, and which may still be within *Pennsylvania*, or in the triangle, and to procure returns of all other lots included in the general drafts of any donation district, and not otherwise appropriated, and to divide large into smaller lots, which released lots, or other lots, as soon as the surveys were made and returned, were to be used to supply the boxes mentioned in the foregoing section, with a sufficient number of tickets, to carry the design of this act completely into effect.

§ 3. The Board of Property is authorized to exercise the same powers relative to donation lands as in other cases.

§ 4. The secretary of the commonwealth directed to deliver all books and other documents in his possession, relative to donation lands to the land officers.

§ 5. On satisfactory proof being made to the Board of Property, by the widow, *heir* or *heirs* of any deceased officer or soldier, it was made the duty of the Board to direct a patent or patents to issue in the usual way, in favour of such widow, *heir* or *heirs*, for such donation lands, and on the same conditions as the officer or soldier would, if living, be entitled to.

§ 6. No application for donation lands hereafter to be admitted; and no patent for such land, already applied for to be granted, unless such patent is demanded within one year after passing this act.

The foregoing act continued for one year by the act of 1st of April, 1803, (chap. 2373.)

Further continued till 1st of April, 1805, by act of 29th of March, 1804, (chap. 2476.)

By an act passed 25th of March, 1805, (chap. 2560.) It was made the duty of the land officers to take out of the wheel all tickets for donation lots situate in the easternmost part of the second donation district, commonly called *Struck district*, which tickets shall not again be put in the wheel, but said lands shall be reserved for, and granted to those who may have settled the same agreeably to the act of 3d of April, 1792, and all such settlers who shall fully comply with the conditions of said

act, and subsequent acts relative to the disposal of the vacant lands within this commonwealth, shall obtain patents for the same, in the usual manner, and the officers of the Land-Office, on the application of any person holding donation lands by patent, within the bounds aforesaid, or within that part usually called the triangle, and the applicant, or applicants aforesaid, releasing his, her or their patent, or patents to the commonwealth, shall have another unappropriated lot or lots of equal quantity; which said lot, or lots shall be patented to the person or persons so releasing, in the usual manner and free of expense.

§ 2. This act, and the foregoing act, (chap. 2276,) of April 2d, 1802, (except the limitation clause of the said last recited act,) were to continue in force until the 1st of April, 1806.

The act of 25th of March, 1805, was annually continued in force, and by the act of 4th of April, 1809, the limitation was further extended until the 1st of April, 1810. Since which period there has been no further extension; and the offices are now closed against any application for donation lands.

By an act passed 11th of March, 1809, in consequence of a decision of the supreme court in the case of *Thomas Grant*, the brother of an officer who was killed in the service of the United States, during the war, and who was held to be entitled as heir at law under the 5th section of the act of 2d of April, 1802, his brother having died unmarried; no patent was to issue for donation lands, after passing this act, except to the widow or children of any deceased officer or soldier.

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CHAPTER MCXXX.

An ACT for incorporating the Presbyterian Church of Falling-Spring, in the county of Franklin.

Passed 25th of March, 1785.—Private act.—Recorded in Law Book No. II. page 474.

CHAPTER MCXXXIV.

An ACT for the limitation of actions to be brought for the inheritance or possession of real property, or upon penal acts of Assembly.

SECT. I. WHEREAS it is necessary for the quieting of estates, and for the greater security of real property, that provision should be made for the limitation of actions to be brought for any manors, lands, tenements or hereditaments:

SECT. II. Be it enacted, and it is hereby enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same, That, from henceforth, no person or persons whatsoever shall make entry into any manors, lands, tenements or hereditaments, after the expiration of twenty-one years next after his, her or their right or title to the same first descended or accrued; nor shall any person or persons whatsoever have or maintain any writ of right, or any other real or possessory writ or action, for any manor, lands, tenements or hereditaments, of the seizin or possession of him, her or themselves, his, her or their ancestors or predecessors, nor declare or allege any other seizin or possession of him, her or themselves, his, her or their ancestors or predecessors, than within twenty-one years next before such writ, action or suit, so hereafter to be sued, commenced or brought.

Entry into lands &c. barred, after 21 years after the title accrued.

No seizin or possession shall be alleged beyond 21 years, before any writ of right, or any other real or possessory writ or action, for

1785. *SECT. III. Provided always, and be it further enacted by the authority aforesaid, That any person or persons now having right, title of entry as aforesaid, and the heir or heirs of such person or persons, may, within fifteen years from this time, enter or commence any action or suit, as he, she or they, or his, her or their ancestors or predecessors, might have done, before the passing of this act.*

Fifteen years allowed to persons now having right or title of entry.

Proviso in favour of persons incapable of suing.

SECT. IV. Provided also, and be it further enacted by the authority aforesaid, That if any person or persons having such right or title be, or shall be at the time such right or title first descended or accrued, within the age of twenty-one years, feme-covert, non compos mentis, imprisoned, or beyond the seas, or from and without the United States of America, then such person or persons, and the heir or heirs of such person or persons, shall and may, notwithstanding the said twenty-one years be expired, bring his or their action, or make his or their entry, as he, she or they might have done, before the passing of this act, so as such person or persons, or the heir or heirs of such person or persons, shall, within ten years next after attaining full age, discoverture, soundness of mind, enlargement out of prison, or coming into the said United States, take benefit of or sue for the same, and no time after the said ten years; and in case such person or persons shall die within the said term of ten years, under any of the disabilities aforesaid, the heir or heirs of such person or persons shall have the same benefit, that such person or persons could or might have had, by living until the disabilities should have ceased or been removed; and if any abatement happen in any proceeding or proceedings upon such right or title, such proceeding or proceedings may be renewed and continued, within three years from the time of such abatement, but not afterward.

In what cases.

Persons claiming lands or pre-emption there of, from the state, shall not enter and sue, unless there has been seven years quiet possession.

*SECT. V. And be it further enacted by the authority aforesaid, That no person or persons that now hath or have any claim to the possession of any lands, tenements or hereditaments, or the pre-emption thereof, from the commonwealth, founded upon any prior warrant, whereon no survey hath been made, or in consequence of any prior settlement, improvement or occupation, without other title, shall hereafter enter or bring any action for the recovery thereof, [or his, her or their ancestors or predecessors,] (n) unless he, she or they, or his, her or their ancestors or predecessors, have had the quiet and peaceable possession of the same within seven years next before such entry, or bringing such action: *Provided always, That if any person or persons so claiming as aforesaid hath been forced or driven away from his, her or their possessions, by the savages, or by the terror of them, or any other persons, or by any other means, except by the judicial authority of the state, hath quitted the same, during the late war, then such person or persons, and his, her or their heir or heirs, shall or may, notwithstanding the said seven years be expired, bring his, her or their action, or make his, her or their entry, within five years from the passing of this act.**

Proviso, in favour of persons expelled by the enemy.

Limitation of suits or

SECT. VI. And be it further enacted by the authority aforesaid, That all actions, suits, bills, indictments or informations, which shall

(n) The words between crotchets obviously an error in the engrossment are inserted in the original law, but are (Note to former edition.)

be brought for any forfeiture, upon any penal act of Assembly made or to be made, whereby the forfeiture is or shall be limited to the commonwealth only, shall hereafter be brought within two years after the offence was committed, and at no time afterwards; and that all actions, suits, bills or informations, which shall be brought for any forfeiture, upon any penal act of Assembly made or to be made, the benefit and suit whereof is or shall be by the said act limited to the commonwealth, and to any person or persons that shall prosecute in that behalf, shall be brought by any person or persons that may lawfully sue for the same, within one year next after the offence was committed; and in default of such pursuit, that then the same shall be brought for the commonwealth, any time within one year after that year ended; and if any action, suit, bill, indictment or information, shall be brought after the time so limited, the same shall be void, and where a shorter time is limited by any act of Assembly, the prosecution shall be within that time.

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indictments
on penal
acts.

SECT. VII. *And be it further enacted by the authority aforesaid,* That no deed, grant, conveyance or assurance, heretofore given by any Sheriff of any of the counties within this state, *bona fide*, and for a valuable consideration, of any lands, tenements or hereditaments whatsoever, where quiet and peaceable possession hath been had of the same for the space of six years, shall be adjudged or taken to be defective, avoided or prejudiced, for not producing in court, upon trial or otherwise, any writ of *fieri facias*, *levari facias*, or *venditioni exponas*, or any returns thereupon, or for want of proof that due and legal notice of the sales of the same was given, or for not having been recorded in the office for recording of deeds.

In what respect Sheriff's deeds shall be good, after six years quiet possession.

(See vol. 1. p. 66, and 67, for the construction of this sec.

Passed 26th March, 1785.—Recorded in Law Book No. II. page 482. (c.)

(c.) For the limitation of actions in personal suits, see vol. 1, page 76, chap. 196, and the notes there subjoined.

By an act passed 12th of March, 1800, (post. chap. 2121,) is enacted, that the provisions and limitations in the third section of the act in the text shall not be a bar to any person or persons, who on the passing of the said act, had any right or title of entry into any lands, tenements or hereditaments, or to the heir, or heirs or assigns of such person or persons, until the expiration of three years from and after the 26th day of March, 1800.

And, by an act passed 11th of March, 1800, (chap. 2118.) The act in the text is repealed, and rendered null and void, and declared to have no force or effect within what is called the seventeen townships, in the county of Luzerne, nor in any case where title is, or has at any time, been claimed under what is called the *Susquehanna* company, or in any way under the state of Connecticut, for any lands or possessions within this commonwealth.

In the case of *Irwin's lessee, v. Nichols and Sagar*, noted for other purposes,

ante. page 186, and where the facts are stated, the *Court* said, there was a legal bar to the plaintiff's recovery. The ejectment was brought after the 26th of March, 1785. Under the 5th section of the act of that date, it is provided, that "no persons having any claim to the possession of lands, or the pre-emption thereof from the commonwealth, founded on any *prior warrant* whereon no *survey* has been made, or in consequence of any prior settlement, improvement, or occupation, without other title, shall hereafter enter, or bring any action for the recovery thereof, unless they, or their ancestors, or predecessors, have had the quiet and peaceable possession of the same within seven years, next before such entry, or bringing such action." Now, it is evident, that the words "*prior warrant*" include also "*a prior application or location*." *Omne majus continet in se minus*. The words of the act expressly mentioning *warrants*, though money may have been paid thereon, must, *a multo fortiori*, be construed to extend to *unexecuted* locations, which are but the bare expressions of wishes to hold lands.

1785. The act is an excellent safeguard to landed possessions, and highly beneficial to the community, and should be construed liberally. Indeed, when there has been *fraud* in the surveyor to whom the location is directed, or where the adversary has *forcibly* and *violently* prevented the making of the survey, the prohibitory terms of the law may not apply, unless there has been a *bona fide* conveyance to a purchaser without notice. But there being no survey in the present case; nor any evidence of fraud, force or threats to prevent a survey being made, the plaintiff was not intitled to recover, and he accordingly suffered a nonsuit.

In *Ewing's lessee v. Barton*, it was said by the court, that the case appeared to be within the limitation act. For although there was a survey on the application, it was not shewn that it was effectuated by the Lessor of the plaintiff, or that he ever attempted to make one; and therefore it should not enure for his benefit. That the survey was adverse to his title; had been returned for Ross, and the legal title now vested in his heirs.

And, in the *Lessee of Samuel Simpson v. Williams*, at *Mifflin*, May, 1802, before *Yates* and *Brackenridge* Justices, (MSS. Reports.) The plaintiff claimed under an application dated 3d of April, 1769, and a survey thereon on the 12th of March, 1775.

It was incontestably proved, that the Lessor of the plaintiff had applied in the secretary's office for the location; but he gave no evidence, either positive or circumstantial, that he paid the surveying fees, procured the survey to be made, or made any attempt to procure one.

The defendant as tenant, of *Christian Miller* and *Samuel Miles*, claimed under the same application, a survey, a warrant of acceptance, a patent thereon, dated 2d of February, 1784. A conveyance from a different *Samuel Simpson* to *Henry Fink* of the premises, in consideration of £. 100, dated 13th May, 1781, and another conveyance from *Fink* to *Christian Miller*, in consideration of £. 106, dated 4th of April, 1792.

It appeared that the lessor of the plaintiff had not claimed these lands till within a few years past; that the survey had been shifted from the lands described in the application, and from presumptive evidence, that it had been directed by the *Simpson* under whom the defendants claimed; and that the premises, which in 1784, would not have sold for more than five shillings an acre would now sell for forty-five shillings.

The court expressed their opinion, that this was a dormant application so far as it respected the plaintiff; that it was barred by the limitation act of 26th of March, 1786, and cited the case of *Ewing's lessee v. Barton*, at *Nisi Prius*, at *Sunbury*, May, 1798, as analogous hereto; and that the defendant's title gained additional strength from his landlords being considered as *bona fide* purchaser of the legal estate, for a valuable consideration without notice. Plaintiff nonsuit.

In the *Lessee of Hugh Neilly v. Benjamin McCormick, Allegheny*, May 1799, before *Yates* and *Smith*, Justices, (MSS. Reports.) The plaintiff claimed on a mere improvement right.

A witness proved, that the lessor of the plaintiff had a small nursery, and trees deadened on the land, about twenty-two years before the bringing of this suit.

For the defendant it was contended, that the present action cannot be maintained on the prior settlement right, without other title, unless the plaintiff, his ancestors or predecessors, have had the quiet and peaceable possession, within seven years next before bringing the action, under the limitation act of the 26th of March, 1785, § 5.

For the plaintiff it was answered, that an inquisition of forcible entry and detainer had been found many years ago against the defendant, and had been removed to the supreme court, where it remained untried, and that consequently the possession of the defendant must be deemed tortious; and moreover this was a case on the frontiers, where the inhabitants had been driven off by the savages.

But, *By the Court*. Why have you not gone on with your indictment, and obtained possession thereon? If you have been forced from the lands by Indians or others, you might have brought your ejectment before the 26th of March, 1790. The case is clearly within the limitation act. The courts not being open has been held no answer to it. 1 Lev. 31. 2 Salk. 420. 1 Keb. 157. When the time once begins, it runs over all *mesne* acts, such as coverture and infancy. 1 Stra. 556. Plowd. 355. 4 Term Rep. 306, 310, 311, 312. Plaintiff nonsuit. And see 2 Binney, 89.

So, in the *Lessee of Sturgeon v. Waugh, Dauphin*, October 1799, (MSS. Reports.) It was held, that though there was a decision of the Board of Property to survey the land for the improver, yet if no steps had been taken to pursue it, and get the survey made, it would not amount to such *other* title as would save the limitation.

And, in the Lessee of *Ephraim Wallace*, v. *Thomas Dickey*, *Westmoreland*, November, 1801, before *Yeates* and *Smuth*, justices, (MSS. Reports.) It appeared, that the lessor of the plaintiff settled on the lands in question in 1775, and cleared 12 acres, and had 26 acres under fence. He continued living in his cabin with his family, cultivating the land, until he was driven off by the Indians, with other inhabitants, in the fall of 1777. He returned in the following year, and threshed out his grain. On the 23d of February, 1785, he took out a warrant for 300 acres, including his improvement, adjoining lands of *William Dickey*, &c. interest to commence from the 1st of March, 1773. But it did not appear that he had ever applied for a survey to be made on his warrant, nor was any survey made thereon.

Joseph Irwin, on the 8th of November, 1784, obtained a warrant for 400 acres including an improvement on the waters of Beaver Dam run, adjoining lands of *David Dickey*, &c. interest to commence from the 1st of March, 1774. A survey of 399 acres 141 perches, was made on this warrant by *John Moore*, deputy-surveyor on the 18th of April, 1786, with a note subjoined thereto, that *Ephraim Wallace* claimed the land under an improvement. Previous thereto, on the 9th of April, 1785, *Irwin* conveyed his right to *George Henry*, in consideration of £. 250. On a caveat filed against the survey made under *Irwin's* warrant, the Board of Property decided, on the 5th of March, 1792, that 200 acres of the survey should be returned on the warrant of *Wallace*, and the residue for *Henry*, under the warrant of *Irwin*. No return was made for *Wallace*, nor any application by him made for that purpose. In 1794, *Wallace* put one *Robert White* as a tenant on part of the land, and who continued thereon since, but there had been an adverse possession against him by the present defendant, before this ejectment was brought, for ten years.

Two days before the present jury was sworn, an ejectment came on for trial between the Lessee of *George Henry*, and the said *Robert White*. No evidence of any improvement or settlement was shewn previous to the date of *Irwin's* warrant, and the evidence of a settlement by *Wallace* as above stated, being given; the court were of opinion, that although he had the later warrant, yet his *bona fide* settlement intitled his tenant to a verdict, and the plaintiff in that cause suffered a nonsuit.

The court were clearly of opinion, that the now plaintiff was barred by the

act of limitations of 26th of March, 1785. Here was no quiet and peaceable possession under his prior settlement, within seven years next before bringing this action; no survey was had under his warrant, nor any return under the decision of the Board of Property. A case somewhat similar occurred at *Dauphin*, in *Sturgeon's* lessee v. *Waugh*, at *Nisi Prius* in October, 1799, wherein the court expressed the same opinion. Plaintiff nonsuit.

But the limitation act of 26th of March, 1785, will not bar a recovery on a descriptive warrant, where proper application has been made for a survey, and the party has been prevented therefrom by a caveat. So held in *Bell's* lessee v. *Lavers* at *Northampton*, June, 1800, before *Skippin*, C. J. and *Yeates*, J. (MSS. Reports.) And the plaintiff had brought his ejectment immediately after the decision of the Board of Property against him, directing the survey to be made for defendant.

What shall be said to be a survey under the 5th section of the limitation act has been much litigated; and in the following case, the court was divided. But though the case, of course, does not settle the point, yet it may be useful and interesting to exhibit the arguments on both sides.

Lessee of *James Carothers* v. *John Carothers*, *Cumberland*, May, 1801, before *Yeates* and *Brackenridge*, justices. (MSS. Reports.)

Ejectment for 14 acres, 123 perches of land, in *West Penn'sbro'* township.

The plaintiff claimed under an application dated 9th of March, 1767, for 390 acres of land, in the Barrens of *Cumberland* valley, joining *William Carothers* and *James Carothers*.

In the spring of the same year *Samuel Lyon* assistant of the deputy-surveyor of the district, began to make a survey under the application, beginning at a hickory corner of *James Carothers*, senr. uncle of the lessor of the plaintiff, and run five courses to a white oak stump. *William Carothers*, his father, who claimed the lands lying to the eastward, was dissatisfied, and said his other children would be defrauded thereby, and left them in dudgeon. Nothing further was then done. But on the 30th of August, 1770, *William Lyon*, another assistant surveyor, was taken to the ground to complete the survey. He began where the former courses ended at the white oak stump, and run three courses to a black oak, which, if pursued, would have run into the cleared field of *James* the uncle. He upbraided his nephew therewith, but the latter still insisted on finishing

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1785. the survey, and searched for the lines of an old survey, made in the name of William Harkness, and then vested in his father, intending to adjoin the lines thereof. Not being able to discover these lines, the lessor of the plaintiff directed the surveyor to stop, and promised to call on him with the draft of Harknes's survey, in order to complete the survey. He next day paid him 40s. the surveying fees, but never called on him again to finish the work; nor was any further attempt made to conclude the business, until in December, 1798, when a survey was perfected by *Samuel Lyon*, under the application, containing 192 acres and 11 perches, which being nearly five years after the ejectment was entered, was of course rejected by the court.

It appeared, that lines running from the white oak stump, or black oak, where the first and second surveys terminated, to the hickory, the place of beginning, would in either case exclude the lands in question. The last course to the black oak, was S. 10 1-2 W. and in order to conclude the disputed part, which lay direct north of the two preceding courses, it would be necessary to conduct the survey by running easterly, northerly and westerly courses, to reach the place of beginning, as was done in 1798, when nine new courses were run.

The Lessor of the plaintiff had 15 or 20 acres of cleared land, adjoining the old place of his father some years before he took out his application, the nearest part whereof was about 50 or 60 perches; but the bulk of the improvement, 150 perches distant from the lands in controversy.

The defendant claimed under a warrant to his father James Carothers, sen. for 300 acres, including an improvement, bounded by land of William Carothers, John Davison, John Young, George Davison and William Cochran, in West Pennsbro' township; interest to commence on the first of March, 1770. On the 12th of December, 1785, a survey hereon was made by *Samuel Lyon*, containing 330 acres 7 perches, and a patent was obtained on the 10th of January following.

The settlement began between 1756, and 1762, and in 1770, he cultivated 10 acres of cleared land, and had a large field north of his house; and this house was only 10 or 15 perches from the disputed line.

The court, after the cause was fully argued by counsel, disagreed in opinion, whether the plaintiff was barred by the limitation act of 26th of March,

1785, and expressed their sentiments to the jury in separate charges.

Brackenridge, J. in substance, said, that the plaintiff's location was descriptive of the land in dispute, by calling for William and James Carothers. The limitation act was grounded on the inconveniences resulting from pocketed locations; but where the warrant or application has been put into the hands of the surveyor, to be executed, it rebutted all presumption of abandonment; *a multo fortiori*, where a survey had been begun, though imperfect in all particulars. As to the defendant, it was perfect, because it drew a dividing line between his improvements, and the lands in controversy. So, a location calling for natural boundaries, is out of the limitation act. It is true, the lines as run, do not include any space, but it is common to leave an open line, and the running of a few courses more, would complete the survey in the present instance. Here the defendant's uncle prevented the completion of the survey in 1770. The plaintiff made two efforts for this purpose, but was unsuccessful in each. He was in no default, but paid the full surveying fees. He had made prior improvements, and must have intended to include them; and his taking possession is strong evidence of his intentions. Besides the shape and figure of the defendant's survey is very unreasonable, when the prior legal right of the plaintiff came to be considered; and on the whole, he concluded, that the plaintiff was entitled to a verdict.

Yeates J. admitted, that the small disputed gore might be described by the plaintiff's location: But the same remark was equally applicable to other lands, adjoining those called for, lying in other directions. It could not be deemed a close, precise application, comparable to one calling for natural boundaries.

The law in question is declared to have been made "for the quieting of estates, and the greater security of real property." Secret orders of survey kept back for years, without any efforts to execute them, were undoubtedly intended to be guarded against. But an application whereon a survey has been begun one year, taken up again in three years, and not perfected for the term of 28 years afterwards, has many serious mischiefs attendant on it. It tends to litigation, and prevents the settlement of the country; for no one can tell what new courses are meditated. Nine courses run, and nine *in fieri* cannot with any propriety be called

a survey made, within the expressions or meaning of the legislature. Merely putting a warrant into the hands of the acting surveyor does not obviate the inconvenience intended to be obviated: more is to be done by the applier. It is true, if the surveyor, either through fraud, partiality, or negligence, does not proceed in his work, every thing reasonable being done on the part of the applier; or, if he is prevented by force, or menace, or the caveat of the adverse party, it will form an exception to the generality of the words. In this instance, though the father and uncle of the lessor of the plaintiff were dissatisfied with his projected survey, they did not obstruct its completion. The former left him, as the party were going on; and notwithstanding the reproaches of the latter, he was peremptory in concluding the business, and was only stopped from his purpose by the want of *Harkness's* survey. This he engaged to procure, and to call on the surveyor with it, but failed therein. Is not then gross laches attributable to him?

It is certain, that the public surveyors do not run the closing line, and no evil arises herefrom; because the notice is general, and the lands comprehended by the survey are accurately ascertained. But the plaintiff had no effective survey made on either day. No definite space was comprehended; he meant to go further a field. A line subtended from the white oak stump, or black oak to the hickory, leaves out the present object of contention. How could it be known to what extent, or in what direction his inclination might lead him?

As to his reducing his application to a certainty by taking possession, he had only cleared over his father's lines: but if it is to be deemed an improvement, he disclaims all equity under it, by not inserting it in his location, if he intended to include his clearing. The uncle's warrant was more correct, though not sufficiently so. One of the witnesses speaks of his settlement made in 1756, another in 1761, or 1762, and the interest on his warrant only commences in 1770, considering the mere improvement rights, the defendant's title appears most preferable. The uncle was actually settled on the land with his family; had actually forty acres of land in cultivation, thirty-one years ago; his dwelling house only a short distance south of the boundary of the lands in dispute, and had a considerable intermediate field then cleared; and, in either view of the case, he was of

opinion, that the plaintiff ought not to recover the premises in question. 1785.

The plaintiff suffered a nonsuit.

In the Lessee of Samuel Mobley, Denton Mobley, William Mobley, Robert Cunningham and Margaret his wife, and Susanna Mobley, v. Christian Ocker, which was tried at *Huntingdon*, May, 1801, before *Yeates* and *Brackenridge*, Justices, the case was ejectment for 214 acres on clover creek, in *Woodberry* township.

The Lessors of the plaintiff founded their pretensions on an improvement made by their father, *Ezekiel Mobley*, on lands adjoining. He settled on those lands in 1774, or 1775, erected a small house with a garden, cleared 15 or 20 acres, and begun two or three acres for meadow. He claimed the lands from Clover creek, southerly to some marked trees between him and *Michael Cryder*, 363 perches distant. The good land extended easterly from the creek, about 125 perches, to *Tussey's* mountain. He sold his claim to one tract west of the creek; and also another tract north of his improvements, which fell back to him.

The settlers were driven off by the Indians in 1777, and *Mobley* among the rest. He went to *Maryland*, and there died.

His widow returned to the lands in 1785, with her five children; the eldest about 15, and the youngest about 2 years old; and was assisted by her brother *William Philips*, with corn and provisions. After some time she disposed of the tract north of the improvements which had fallen back to her husband, for the maintenance of her family; and being alarmed about their right to the tract whereon they lived, agreed in behalf of herself and family, with her brother, the said *William Philips*, that if he would secure to them 200 acres, by an office right, he might have the residue for himself. She afterwards received a horse and cow as a further consideration for the improvement claim.

Philips accordingly took out warrants, and obtained surveys of 200 acres in the name of *Susanna Mobley*, and 214 acres and 90 perches for himself; which he afterwards patented and sold to defendant for a valuable consideration.—No improvement whatever was made on the lands in dispute, until after the survey was made for *Philips* in 1793.

Before the *parol* evidence was gone into, the defendant's counsel objected, that the plaintiff was barred by the act of limitations of 26th of March, 1785,

1785. sect. 5, there having been no quiet and peaceable possession of the premises within seven years next before bringing the action.

To this it was answered, that the widow had always been in possession of the improved part of the lands, since the inhabitants returned to their settlements; and that if she was deprived of the possession of any part, it arose from the fraud or management of *Philips*, or her mistake in believing that an office right was indispensably necessary to hold the lands.

The court said it was morally impossible to form any judgment, whether there had been an abandonment of the premises, or not, so widely did the counsel differ in their statements, until the evidence was fully heard. The legal objection might afterwards be taken up and decided on.

The plaintiff's counsel then excepted to giving evidence of any contract or sale by the widow respecting the improvement claim. No act which she could do, could affect the rights of the children in their minority, in lands claimed by improvement, and ascertained on one side by a marked line; and for this was cited 2 Dallas, 205. *Duncan's lessee v. Walker*.

The Court said improvement rights were equitable claims, which might be fortified by the acts of a widow, during the minority of her children, by pursuing and continuing the first settlement; so, also, might they be abandoned and forfeited by her neglect. Evidence was equally applicable and relevant in both cases. It was impossible to lay down any general rule on the subject. Every case must depend on its own peculiar circumstances. The effect of the evidence must be judged of, after it has been received.

After the evidence had been gone through, the court said, that they discovered nothing unfair or inequitable, in the transaction of *Philips* with the widow. There were many years previous to 1791, when improvement rights were deemed to stand on a precarious footing. While this opinion generally prevailed, there was no impropriety in a widow's securing at least a part of the land claimed; and in this instance, one of the adjoining tracts had been transferred by the improver in his lifetime, and two others had been disposed of by the widow after his death. The claim went to an unreasonable extent, and 200 acres had been secured to the family.

It was agreed by the court, and all

the counsel, on the question being made, that the fifth section of the limitation act of 26th of March, 1785, extended to, and was binding on infants, where there had been no possession of the lands held under the improvement for seven years next before the action brought. The preceding section contains a *proviso* in favour of infancy, coverture, &c. But here it is only in favour of those who have been driven from their possessions by force or terror, &c. and the previous part of the law runs thus, "Unless he, she or they or his, her or their ancestors, or predecessors, have had the possession, &c." The law is general in its nature, and binds every member of the community "for the quieting of estates, and security of property."

The plaintiff suffered a non-suit. (MSS. Reports.)

To the same effect was the case of the Lessee of *Joshua Clark v. George Hackethorn*, (in a case nearly similar,) at Washington, November, 1801, before *Yeates* and *Smith*, justices. (MSS. Reports.)

In the Lessee of *James Brice v. Richard Curran*, at *Mifflin*, May, 1802, before *Yeates* and *Brackenridge*, justices. (MSS. Reports.) The case was this—

The plaintiff claimed under a warrant to *John Brown*, dated 5th of April, 1788, for 50 acres, including an improvement, bounded, &c. Interest to commence from 1st of March, 1761, and a survey made thereon, by *James Harris*, on the 8th of March, 1796. *Brown* had raised a crop on the land, in 1788, but neither he, nor the persons claiming under him, had any actual subsequent possession. There was an adverse possession when the survey was made, and the surveyor was forbidden to execute the warrant on the lands. The suit was brought to August term, 1800.

Exception was taken by the defendant's counsel, to the shewing of the survey in evidence, on the grounds of the limitation act, passed 26th of March, 1785, sect. 5. It is an act of repose, and highly beneficial, and pursues the statute in *England*, of 21 Jac. 1. c. 16. A warrant gives no title to lands, but only authorizes a survey within six months thereafter. Here there was no survey made within seven years after the date of the warrant, nor any possession antecedent to the commencement of the suit for eleven years. But the act requires the quiet and peaceable possession of the lands within seven years next before the entry, or bring-

ing the action. These words refer equally to warrants and settlements; and after the seven years, the warrant without a survey shall be presumed to be abandoned, in the same manner as a bond shall be presumed at common law to be paid after the lapse of twenty years, unless the legal presumption be repelled by other proof.

The plaintiff's counsel answered—The words of the fifth section are "No person or persons, that *now* hath, or have any claim to the possession of any lands, or the pre-emption thereof from the commonwealth, upon any warrant whereon no survey hath been made, or in consequence of any prior settlement, improvement, or occupation, without other title, shall hereafter enter, or bring any action for the recovery thereof, *unless*, he, she or they, or his or their ancestors, or predecessors, have had the peaceable and quiet possession of the same, within seven years next before such entry, or bringing such action; with a provision in favour of persons driven away from their possessions by the savages. Now, it is obvious, that the words are confined to claims existing at the passing of the act, and not to future claims, the word *now*, being made use of.

It is also clear, that there are two independent clauses, marked by the disjunctive *or*, referring to claims by warrant, or improvement. The expressions "without further title," refer to improvements alone; those following *unless*, may refer to warrants also. So that it will read thus—A warrant whereon no survey has been made, or an interrupted settlement, may justify an entry, or support an action, provided there has been a quiet and peaceable possession of the lands, within seven years next before such entry or action. The act in no part of it directs, that a survey shall be made on a warrant within seven years after its being issued; or, that in the case of a warrant, accompanied with a survey, it is necessary there should be a possession within seven years before the suit brought. The construction has never obtained, that the survey under a warrant should be made in six months. It would defeat the titles of many valuable estates. Indeed it has often been said from the bench, that so far from warrants not conferring a title to lands, where the full purchase money has been paid, that in the instances of their being specially and exclusively descriptive of certain lands, as of an island encompassed by water, &c. an ejectment might be supported on such a warrant

without a survey, and that such case was not within the limitation act. Here there was a warrant subsequent to 26th of March, 1785, and a survey thereon regularly made, in addition to an improvement made many years ago.

The court directed the survey to be received in evidence, and said the limitation act only referred to warrants issued before the law was enacted: and *Yeates*, J. observed, that he was of opinion that the doctrine of the plaintiff's counsel, was accurate and correct throughout.

But the verdict was for the defendant on the merits.

For the act of limitations to operate as a bar, the possession must be *adverse*. 1 Dallas, 67.

In the case of *Jackson*, lessee of *Hardenberg* and wife, and *Hasbrouk* and wife, against *Shoonmaker*, in the supreme court of New-York, 2 *Johnson's Reports*, 231, 234. The defendant proved, that in 1774, there being a rumour of the plaintiff's claim, that those under whom he held, inclosed the part which they understood was claimed by a *possession fence*, which was made by trees felled, and lapped one upon another, and that this fence had ever been kept up.

The verdict was for the plaintiff, on the circuit, and on motion in the supreme court, to set aside the verdict, as against evidence, and for the misdirection of the judge:

Kent C. J. delivered the opinion of the Court; which, so far as respects this point, is as follows.

"The other point in the cause relates to the adverse possession set up by the defendant. The *possession fence*, as it was termed, which was run round the large tract in 1774, I do not consider as an adverse possession, sufficient to toll the right of entry of the true owner, after twenty years. This mode of taking possession, is too loose and equivocal. There must be a real and substantial inclosure, an *actual occupancy*, a *possessio pedis*, which is definite, positive and notorious, to constitute an adverse possession, when that is the only defence, and is to countervail a legal title," and the motion for a new trial was denied.

In *Rochell v. Holmes*, 2 *Bay's South Carolina reports*, 491. The judges all held, "that title by possession, so as to defeat a grant, or other legal conveyance, is never to be presumed; but must be actually proved and shewn, in order to rebut a prior title, in the same manner, and with the same degree of precision, as plaintiff must shew a clear title in him, before he can recover."

1785.

CHAPTER MCXXXV.

An ACT to regulate the fishery in the river Schuylkill.

[See vol. 1.
chap. 465, pa.
235, and the
notes thereto
subjoined.]

SECT. I. WHEREAS divers laws have heretofore been enacted, for regulating the fisheries in the river Schuylkill, and for the preservation of the fish in the said river, whereby many useful and necessary regulations and provisions were made, conducing to the general advantage of a great number of the inhabitants of this commonwealth, residing near the said river, yet, for want of some further regulations, the inhabitants dwelling near the upper parts thereof have not reaped such advantages from the said laws, which the good intentions of the several Assemblies seem to point out:

SECT. II. And whereas some of the Justices of the peace of this commonwealth have refused to act under the said laws (from an apprehension that they had expired by their own limitation,) whereby the advantages aforesaid are no longer to be expected:

SECT. III. And whereas it hath been a common practice with the inhabitants residing near the lower parts of the said river, to fish with divers seines or nets in the same pool or fishing place, by which means shad and other fish are, in a great measure, prevented from running up to the places where they usually spawn, which is well known to be far up the river, whereby (for want of a sufficient number of mother fish,) the different species are, of late, extremely diminished, from all which it is evident that a more full and perfect law is become necessary:

SECT. IV. *Be it therefore enacted, and it is hereby enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same,* That from and after the publication of this act, no more than one net or seine shall be cast, drawn or any way made use of, in any pool or fishing place, by any person or persons whatsoever, in the said river, in any one term of twenty-four hours, to begin at twelve of the clock at noon, and to continue until the same hour of the day next following; and if any person or persons shall draw or make use of any seine or net in any pool or fishing place in the said river, or shall be aiding or assisting therein, within the time aforesaid, after any other seine or net hath been within that time taken or drawn out of the same, every such person or persons so offending, and being thereof convicted before any Justice of the peace of the county where he or they shall be apprehended, (which Justice is hereby authorized and empowered to hear, try and determine the same,) shall forfeit the sum of five pounds for every such offence, to be paid to the informer or prosecutor, or suffer two months imprisonment, without bail or mainprize: And the better to ascertain what shall be deemed and understood to be a pool or fishing place, within the meaning of this act: (*p*)

Times for
fishing limited.

Penalty for
disobedience.

(*p*) The penalties recovered under this act were made double the sum in every case, and appropriated, one half to the informer, and the other half to the commissioners for clearing the

river, by the act of the 9th of March, 1786, which allows an appeal from the decision of the Justice to the Court of Quarter Sessions. (*Note to former edition.*)

SECT. v. *Be it therefore enacted by the authority aforesaid, 1785.*

That so much of the said river, as extends from one side or bank to the other side or bank thereof, and from the place where seines or nets have usually been thrown in, to the place where they have been usually taken out, shall be deemed and held, and is hereby declared to be a pool or fishing place, within the meaning of this act.

What shall be deemed a pool or fishing place.

SECT. vi. *Provided always, and be it further enacted by the authority aforesaid,* That where two or more persons hold or occupy any lands, on the same side of the river, adjoining to any pool or fishing place, nothing herein contained shall in any wise be construed to prevent or deprive any such persons from enjoying the privilege of fishing in that part of the river directly opposite their own land, respectively, as a separate pool or fishing place, the partition of which pool to be, by continuing the course of division line or lines of the lands of the persons next adjacent, and every such division to be subject to the same rules and regulations, as other pools and fishing places are by this act made subject, any thing in this act contained to the contrary notwithstanding.

Proviso in favour of owners of lands adjoining to any pool or fishing place.

SECT. vii. *And be it further enacted by the authority aforesaid,* That where two or more persons, residing opposite to each other, near the said river, on different sides thereof, may have suitable wharves or landing places on their respective shores, or on an island opposite thereto, for taking or drawing seines or nets out of any pool or fishing place, it shall and may be lawful for such persons, respectively, to fish with their seines or nets alternately, and not otherwise, that is to say; such person or persons, possessing such conveniencies as above described, who shall reside near on one side of the river, shall or may fish in such pool or fishing place, with one seine or net only, for and during the time of twenty-four hours, to be computed as aforesaid, and the person or persons, possessing such wharf or landing place as above described, who shall reside near the other side of the river, shall or may fish in such pool or fishing place, with one seine or net only, for and during the time of twenty-four hours, to be computed as aforesaid, next following, and so alternately, during the shad fishing season.

Owners of wharves on opposite sides of the river may fish alternately.

The manner and time of doing so.

SECT. viii. *And be it further enacted by the authority aforesaid,* That if any person or persons shall cast, draw, or otherwise make use of, any seine or net for catching or taking fish in the said river, or shall be aiding or assisting therein, between the sun's setting on Friday and the sun's rising on Monday, next following, every such person, being thereof convicted in manner aforesaid, shall forfeit and pay the sum of five pounds, to the use of the informer or prosecutor, or suffer two months imprisonment, without bail or mainprize. (q)

Penalty on fishing at certain prohibited times.

SECT. ix. *And be it further enacted by the authority aforesaid,* That if any person or persons shall be found making use of any seine or net, contrary to the true intent and meaning of this act, and who, to avoid being known, or prosecuted according to this act, shall secrete themselves, or abscond from the place, and leave their said seine or net in or near the said river, that then, and in such case, on

Seines and nets of offenders, who shall abscond, forfeited.

(q) The period of hauling seines extended to the time between the sun's setting on Saturday evening. See the act of the 9th of March, 1786. (Note to former edition.)

1735.

Proceedings
thereon.

due proof being thereof made before any two Justices of the peace, the said seine or net shall be forfeited. And the said Justices shall direct and order that the said net shall be exposed to public sale, after giving five days notice thereof by advertisement, and the money arising therefrom to be paid, the one half thereof to the informer or prosecutor, and the other moiety to the overseers of the poor of the township where the informer or prosecutor resides, for the use of the poor of the said township, city or district, the cost of such prosecution and sale being first deducted.

Hearing and
appeal allow-
ed to the
party.

SECT. X. *Provided always*, In case the parties or owner of such seine or net shall appear at any time within the said five days, that then, and in such case, the said two Justices shall hear the parties, and determine the same according to the true intent and meaning of this act, saving to the defendant or defendants the right of appeal from the judgment of the said Justices, to the next court of General Quarter Sessions of the proper county, and if the defendant see cause, of trial by jury, upon condition, that he or they give security to prosecute the same to effect.

[See chap.
1067.]

SECT. XI. And whereas it is represented to this House, that sundry persons residing near the lower part of the said river (in defiance of the laws heretofore made for regulating the fisheries therein,) have, in a daring manner, continued fishing every night through the season, when practicable, depending on the difficulty or impossibility of detection, as they generally fish without light: For remedy whereof,

Proceedings
against of-
fenders in
the night.

SECT. XII. *It is hereby further enacted by the authority aforesaid*, That upon any information or complaint made to any justice of the peace of the county, where any such offence may be committed, or of the county adjoining said river, opposite to where such transgressions are made, the said Justice is hereby authorized and required to send his warrant, directed to any constable, to apprehend all such persons as shall be found aiding, or in anywise assisting in the breach of this act, which persons, when apprehended as aforesaid, he shall take before the said Justice, or before the nearest Justice to the place of such apprehending; and every such person, so offending, and being thereof convicted, by the oath or affirmation of said constable and one or more credible witnesses, or by his or their own confession, shall forfeit and pay the fine aforesaid, or suffer the imprisonment aforesaid, and moreover shall pay the cost of such prosecution. And in order to do justice to the inhabitants of this commonwealth, who reside far up the said river,

The fish-
ing pro-
scribed at
different
places.

SECT. XIII. *Be it therefore further enacted by the authority aforesaid*, That no person or persons shall draw or use any seine or net, for the purpose of catching shad, or such as are suitable for that purpose, in the said river, nor be aiding or assisting therein, between the mouth thereof (at the lower part of the island, heretofore known by the name of Province Island, and the lower Falls, five miles from Philadelphia, after the twentieth day of May; nor between the Falls, and the mouth of Perkiomen creek, after the twenty-fifth day of said month; nor between the mouth of said creek, and the mouth of Manatawny creek, after the thirtieth day of said month, or between the mouth of said creek, and the ford at the town of Read-

ing, after the fifth day of June; nor in any part thereof, above the said ford, after the tenth day of June, in every or any year; nor draw any seine or net whatever, for at least thirty-five days next after the expiration of the shad fishing season; nor draw any brush or brush nets at any time, after the passing of this act, in any of the said divisions respectively, according to the time above limited for cessation, under the penalty of ten pounds, to be recovered and applied in the manner and for the uses in the last recited act directed and expressed. (r) 1785.

SECT. XIV. *And be it further enacted*, That the fifth section of an act of Assembly, entitled "A further Supplement to the act, entitled "An Act for making the river Schulykill navigable, and for the preservation of the fish in the said river," shall be, and the same is hereby repealed. (s) [Repeal of part of a former law.]

Passed 28th March, 1785.—Recorded in Law Book No. II. page 484.

(r) The seines are not to be drawn, of June to the 1st of July annually.—See the act of the 9th of March, 1786. (Note to former edition.)
(s) The act here referred to was passed on the 24th of March, 1781. chap. 919, vol. 1, page 516. (Note to former edition.)

CHAPTER MCXXXVI.

An ACT for vesting in the American Philosophical Society, held at Philadelphia, for the promoting useful knowledge, a certain lot of ground, being part of the State-house square. (t) [See vol. 1, page 502. The Society incorporated.]

Passed 28th March, 1785.—Private Act.—Recorded in Law Book No. II. page 484.

(t) By this act a lot of ground, being a part of the state-house square, was vested in the American Philosophical Society, with a proviso, that it should be applied to no other use, but that of erecting buildings for the accommodation of the society; but they were vested with power to lease the premises, under some qualifications, by an act of the 17th of March, 1786.—See ante, chap. 968, where the estate of the Silk Company is transferred to this society (Note to former edition.)

CHAPTER MCXLIV.

An ACT to authorize the appointment of new commissioners, to execute the act of Assembly, entitled "An act declaring the river Susquehanna, and other streams therein named, public highways, for improving the navigation of the said river and streams, and for preserving the fish in the same," and to extend the powers of the said commissioners to all parts of the same river within this state.

SECT. I. WHEREAS divers of the commissioners named in the act of Assembly, entitled "An act declaring the river Susque- [See vol. 1, chap. 463, page 231, and

1785.
 the notes
 thereto, and
 chap. 627,
 page 324 and
 the notes
 thereto
 subjoined.

hanna, and other streams therein mentioned, highways, for improving the navigation of the same river and streams, and for preserving the fish in the same," which was enacted in the late province of Pennsylvania on the ninth day of March, which was in the year of our Lord one thousand seven hundred and seventy-one, are since deceased, and it is proper that new commissioners be appointed, in the stead of the commissioners who are named in the same act: Therefore,

The surviving
 commis-
 sioners for-
 merly ap-
 pointed,
 superseded
 and new ones
 to be ap-
 pointed.

SECT. II. *Be it enacted, and it is hereby enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same,* That the surviving commissioners, who are named in the act aforesaid, shall be, and the same are hereby, superseded; and the President, and in his absence the Vice-President, with the Council, shall, as soon as conveniently may be, nominate and commission twenty persons of knowledge and activity, residing within twenty miles of the said river, or of one of the streams therein named, to be commissioners, for the purpose declared and set forth in the said act, and in this act; who, or the major part of them, or of their successors, to be appointed in the stead of any commissioner who shall resign, remove without the limits aforesaid, misbehave, or die, shall do and perform all the duties, and exercise all and singular the authorities, which, by the act aforesaid, are enjoined upon, or vested in the commissioners in the same act named.

SECT. III. And whereas the commissioners first aforesaid were, by the said act, restrained from clearing and removing the natural obstructions to the navigation of the same river, southward of Wright's ferry: And whereas the extensive countries which are watered by the river Susquehanna, and the numerous branches thereof, are stocked with immense quantities of oak, pine and other trees, suitable for staves, heading, scantling, boards, planks, timbers for ship-building, masts, yards and bowsprits, from which great profit and advantage might arise to the owners thereof, if the same could be conducted in rafts and otherwise, down the said river, to the waters of Chesapeak, which trees must otherwise perish on the lands whereon they grew: For remedy whereof,

The Susque-
 hanna be-
 tween cer-
 tain stations,
 declared a
 public high-
 way.

SECT. IV. *Be it enacted by the authority aforesaid,* That the river Susquehanna shall be deemed and taken to be a public highway, in all parts thereof within this state, from the division line of the state of Maryland and this state upwards, to the town of Northumberland, in the county of Northumberland, and thence, by and along each of the two great branches of the same river, which meet at the said town, in and throughout the whole length and breadth of the same river; and the duties and authorities of the commissioners, to be named as aforesaid, shall be extended and exercised accordingly.

SECT. V. And whereas the specific penalties, in money, provided and declared in and by the act aforesaid, for the punishment of offenders against the regulations and directions of the same, are, from the rise, which, since the enacting thereof, has happened in the prices of most of the necessaries of life, become too small to enforce obedience thereto: And whereas offences against the same act

are, in some cases, made cognizable before any Justice of the Peace, and the right of trial by jury is thereby infringed: 1785.

SECT. VI. *Be it therefore enacted by the authority aforesaid,* That all the specific penalties, in money, provided and declared by the same act, shall henceforth, in every case, be double the sums therein set forth, and every person who shall be charged with offending against the act aforesaid, or this act, shall be prosecuted in the court of Quarter Sessions of the peace of the proper county, and not in the summary way aforesaid. Penalties of former acts to be doubled.
How to be recovered

SECT. VII. *Provided always, and be it further enacted by the authority aforesaid,* That the commissioners to be appointed by virtue of this act shall, every year hereafter, before the fifteenth day of March within such year, render to the Comptroller-General of this state a particular account, supported by the proper vouchers, of all the sums of money which shall come to their hands, respectively, and of all sums of money which shall be expended by them, in pursuance of this act, for and during the year preceding, in order that the same may be adjusted, settled, and allowed. The commissioners to render their accounts yearly, to the Comptroller.

Passed 31st of March, 1785.—Recorded in Law Book No. II. page 493.

CHAPTER MCXLVIII.

An ACT for erecting and opening a Loan-Office, for the sum of fifty thousand pounds. (u)

[FIFTY thousand pounds in bills of credit, emitted by the act of sixteenth March, one thousand seven hundred and eighty-five, (ante. chap. 1126, page 287,) were to be placed in the hands of the Commissioners of the Loan-Office.

SECT. 5. The Trustees of the Loan-Office were appointed, who were to give bond, and take an oath of office, the form of which was prescribed.

SECT. 6. The oath was to be endorsed on the bond, and recorded, and when forfeited, to be sued for the use of the state.

(u) By an act of the 10th of Sept'r, 1785, Rowland Evans was appointed a trustee of the Loan-Office, in the room of Joseph Dean; two of the trustees were authorized to act in all matters relating to the office; and an additional number of signers of the bills of credit, emitted by the act of the 16th day of March, 1785, (ante. chap. 1126,) was appointed. By an act of the 27th of Nov'r, 1787, the mortgagors were allowed to pay the whole or a part of the money borrowed from the Loan-Office, at any time before the time specified in the mortgage; and all the bills of credit of the year 1785, paid into the Loan-Office, were prohibited from being re-issued. By an act of the 26th of March, 1789, the unappropriated interest, payable into the Loan-Office, was carried to a general fund, for the support of government, &c. which appropriation was confirmed by an act of the 7th of April, 1791. By an act of the 1st of April, 1790, the powers before vested in the trustees of the Loan-Office were transferred to the treasurer of the state, which provision was continued, when a new arrangement of the department of accounts took place, by the act of the 4th of April, 1792. By an act of the 2d of April, in the same year, the sum of £.1000, arising from the interest payable into the Loan-Office, was appropriated for the repairs of Mud-Island.—See chap. 1000. (*Note to former edition.*) [See note to chap. 672, vol. 1, page 403, all the duties now remaining to be performed under this act, are enjoined on the state treasurer by act of April 4th, 1805, (post. chap. 2600.)]

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SECT. 7. The Trustees incorporated by the name of "The Trustees of the general Loan-Office of the commonwealth of Pennsylvania," with power to loan money on mortgage, and recover the same.

SECT. 8. No loan to be made without a certificate from the Commissioners of the proper county, of the value of the estate; and the Commissioners were to take a certain prescribed oath or affirmation before granting such certificate, which certificate was to be filed and preserved by the Trustees, &c.

SECT. 9. None of the Trustees to be discharged till they had fully accounted, and delivered up their official documents to the succeeding Trustees.

SECT. 10. Prescribed in what sums, for what term, and on what security the money should be loaned. To take mortgages; which were to be executed to them in their corporate style only.

SECT. 11. Apportioned the loan among the city and several counties.

SECT. 12. Provided, that if the inhabitants of any county did not, within six months, call for their portion, it might be loaned to such persons as should apply for the same, &c.

SECT. 13. Provided that the mortgage money might be paid off before the time specified in the deeds.

SECT. 14. Monies paid in on mortgages were not to be paid into the treasury, but might be re-loaned; and the time for the attendance of the Trustees was prescribed.

SECT. 15. Mortgages to be entered in proper books, and copies to be evidence; mortgagor to take a prescribed oath, which was to be endorsed on the mortgage.—The operation of the deeds; and of the words "grant, bargain and sell," as a covenant.

SECT. 16. A bond and warrant of attorney to accompany each mortgage; with a release of errors. To be put in force in case the title should prove defective.]

Mortgagors
may not leave the
premises till
default.

SECT. XVII. *Provided always nevertheless,* That until some default be made in payment of some part of the mortgage monies, by the mortgagors, respectively, it shall and may be lawful to and for them, and their heirs, to hold and enjoy the mortgaged premises, any thing in this act, or in the mortgage deeds, to the contrary notwithstanding; but if default shall be made or suffered in payment of any part of the mortgage monies aforesaid, whether of the principal or interest, which the mortgagees, their heirs, executors, administrators or assigns, should or ought to pay according to the days of payment aforesaid, in their respective deeds of mortgage specified, the said trustees, after six months next following such default made as aforesaid, shall issue their precept to the Sheriff of the county where the mortgaged premises shall lie, commanding him to enter upon the messuages, lands, rents and hereditaments, respectively, in the deeds of mortgage specified, and the same or such part thereof as shall be sufficient to discharge and satisfy the mortgage monies, with the interest thereof, and costs accruing on the sale, to sell on the premises, by public auction or vendue, and convey to the highest bidder, after at least thirty days public notice given of such sale, by advertising them in the news papers, and by

Proceedings
in case of
default,

affixing advertisements in some of the most public places in the county, and out of the monies arising by such sale to raise the principal sums due and to become due, with the interests, costs and charges accrued, returning the overplus, if any, to the owners of such lands and hereditaments, and also to pay and deliver the said principal sums and interest to the said trustees, for the use of the state; which said precept the said Sheriff is hereby enjoined and required fully and impartially to execute, for which he shall have the same fees for advertising and sale, as are allowed by law for like services, where lands are sold by a writ of *venditioni exponas*, and no more.

1785.



SECT. XVIII. *And be it further enacted by the authority aforesaid,* That the mortgagor and mortgagors of all such lands, as shall be sold by virtue of this act, shall stand and be foreclosed of and from all right of redemption of the same.

No equity of redemption allowed, after the sale of mortgaged premises.

SECT. XIX. *And be it further enacted by the authority aforesaid,* That the said trustees shall endorse upon each mortgage deed their receipts of all their yearly quotas paid by the respective mortgagors, distinguishing the principal sum from the interest, which they shall also note on the counter parts to them produced, when required; and upon the last payment thereof, the said trustees shall enter in the margin of the enrolment of the mortgage deed the time of the discharge thereof, for which they shall receive of the mortgagor one shilling, and no more: And the said trustees shall keep distinct, fair and true accounts of all the sums they receive by virtue of this act, and of what they lend, emit or pay, by virtue hereof, or by the orders of the Assembly, in regular day-books, journals and ledgers, to be fairly kept for those purposes, and shall exhibit the same, together with their other vouchers, to the committees of Assembly appointed for settling the public accounts, who shall settle and adjust the said accounts, and report the same to the House.

Receipts of quotas to be endorsed on the mortgages;

and entry made of the last payment in the margin of the enrolment.

Trustees accounts how to be kept and settled.

SECT. XXI. *And be it further enacted by the authority aforesaid,* That if it shall appear, on the settlement of the accounts of the said trustees by the said committees, and a confirmation thereof by the House of Assembly, that any deficiency hath happened by any borrower or mortgagor not having right to the lands or tenements mortgaged, or in the value thereof, or by any other ways or means whatsoever, to pay the monies and the interest accrued thereon, with the cost of such suits as shall be prosecuted for the same, then, and in every such case, the said trustees, having an order from the Assembly for that purpose, shall draw an order on the treasurer of the county in which such deficiencies shall happen, for the payment of such deficiencies, if so much money shall be then in the treasury, and if not, the said trustees shall, and they are hereby authorized and empowered to issue their precept to the commissioners and assessors of the said county, enjoining them to cause the said deficiencies so happening, with such costs and charges as shall accrue, and be paid by the said trustees, in endeavouring to recover the same, forthwith to be assessed, raised and levied, of and upon the county, in the same manner, by the same persons, and under the same pains, penalties and forfeitures, as other county rates are by law directed to be assessed, raised and levied, which the said commissioners and

In case there is a deficiency to pay the monies loaned, interest and costs, the amount to be drawn from the treasury of the proper county; or to be raised in the same manner as county rates and levies;

1785. assessors are hereby enjoined and required to do ; and the said deficiencies, when so levied, shall be paid to the said trustees, in order to replace the monies so deficient.

and paid to the trustees, Penalty on commissioners or assessors refusing or neglecting to raise the deficient sums.

SECT. XXII. *And be it further enacted by the authority aforesaid,* That if the said commissioners and assessors shall, upon receipt of such precept, refuse or neglect, with all convenient speed, to cause to be assessed, raised and levied, all such deficiencies as are mentioned in the said precept, in the manner herein before directed, every such commissioner and assessor, so refusing or neglecting, being thereof legally convicted, shall forfeit the sum of one hundred pounds for every such refusal or neglect.

Mortgagors to make it punctual, or the trustees charged with the arrearsages.

SECT. XXIV. And the better to prevent inconveniences, arising from indulging the mortgagors to be behind in their payments hereby directed to be made, *Be it further enacted by the authority aforesaid,* That the trustees for the time being shall, and they are hereby required to keep the mortgagors aforesaid up to their annual payments, as by this act is directed and appointed ; and the committees of Assembly, to be annually appointed to audit the said trustees' accounts, are hereby directed not to allow of any quotas in arrear and unpaid, which have been due twelve months at the time of the settlement, but to consider and report the same as monies in the hands of the said trustees, for which the said trustees shall be accountable, excepting only such sums, for which the trustees have commenced suits, or otherwise have proceeded, according to the direction of this act, for the recovery of the money due.

[SECT. XXV. Vacancies in the office of trustees, how to be supplied.

SECT. XXVI. Trustees to continue no longer than three years in service.

SECT. XXVII. A clerk to be appointed ; his duty and fees ; and oath to be taken by him prescribed.]

Passed 4th April, 1785.—Recorded in Law Book No. II. page 503.

CHAPTER MCLII.

A further SUPPLEMENT to the act, entitled “ An act for acknowledging and recording of deeds.”

[See vol. 1, Chap. 208 pa. 94, and the notes thereto subjoined.]
[* Vol. I chap. 734, pa. 422.]

SECT. I. WHEREAS by a supplement to the act, entitled “ An Act for acknowledging and recording of deeds,” passed the eighteenth day of March, in the year of our Lord one thousand seven hundred and seventy-five ;* it was enacted, That all deeds and conveyances, which, from and after the publication thereof, should be made and executed within the then province, now state, of and concerning any lands, tenements and hereditaments, in this state, or whereby the same might be any way affected in law or equity, should be acknowledged by one of the grantors or bargainors, or proved by one or more of the subscribing witnesses to such deeds, before one of the Judges of the Supreme Court, or before one of the Justices of the court of Common Pleas of the county where the lands conveyed lie : And whereas it frequently happens that the said Judges

of the Supreme Court are all necessarily absent at the same time from the city of Philadelphia, attending the public business at the respective Circuit and Nisi Prius courts of this state, and it may be necessary, for the convenience of the people, that many deeds and conveyances of land, lying in the remote counties of this state, should be acknowledged or proved in the city or county of Philadelphia, during such absence of the said Judges:

SECT. II. *Be it enacted, and it is hereby enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same,* That all acknowledgments and probates of deeds and conveyances, of and concerning any lands, tenements or hereditaments, lying within any part of this state, made and done before the President of the court of Common Pleas for the county of Philadelphia, or the President of the court of Common Pleas in any other county within this state, shall be as effectual and available in law, to all intents and purposes whatsoever, as if the same were done before one of the Judges of the said Supreme Court, any law, usage or custom, to the contrary in anywise notwithstanding.

Passed 8th April, 1785.—Recorded in Law Book No. II. page 524.

CHAPTER MCLIII.

An ACT to provide further regulations, whereby to secure fair and equal proceedings in the Land-Office, and in the surveying of lands.

SECT. I. **WHEREAS** the time for opening the Land-Office of this state, for the lands contained within the purchase lately made by the commonwealth of the Indian natives, of all the residue of waste lands, within the charter bounds of Pennsylvania, as the same have been adjusted between this state and the state of Virginia, is fixed to be from and after the first day of May next, when it is probable that numerous applications will be made to the said Land-Office at the same time, for lands within the bounds of the said late purchase, and the officers of the Land-Office must necessarily be obliged to give preference to some persons, before others whose applications may be made equally early, and thereby great dissatisfaction must arise unless some provision be made by law to regulate the same: For remedy whereof,

SECT. II. *Be it enacted, by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same,* That from and after the time assigned for opening the said Land-Office, as aforesaid, until the end of the tenth day thereafter, being the eleventh day of the month, the Secretary of the Land-Office, upon the whole of the purchase money being deposited in the hands of the Receiver-General of the Land-Office, and not otherwise, and upon acquittance for the same being shown to the said Secretary, he shall receive and file all applications made to him for lands within the

1785.

The presidents of the courts of Common Pleas authorized to take acknowledgments, &c.

[See chap. 1083, ante, page 102 and the notes thereto subjoined.

Applications for the purchase of lands, when to be made, how to be received, and proceeded on by lottery, in order to establish a priority.

1785. said late purchase, not exceeding one thousand acres in one application, numbering them, respectively, from number one, after the common progression, to the last which shall be received within the same ten days; and every such application shall set forth, in words at length, and not in figures only, the number of acres asked by each applicant respectively; after which the said Secretary shall proceed to enter all such applications, and to make a fair and accurate list thereof, and, upon each application so entered, shall issue a warrant for such quantity as is contained in the application respectively, provided the same does not exceed one thousand acres, to the person entitled to the same, giving preference and priority of number to him to whom such preference and priority shall fall upon a fair lottery, to be made by the said Secretary as hereinafter directed; and so to the next in order, until a warrant be issued upon every of the said applications, according to their preference and order, to be adjusted as aforesaid: And the said lottery shall be formed and conducted in manner following, that is to say; the name of the first applicant, together with the number of acres applied for by such person, shall be written on an oblong piece of paper, as nearly as may be of the breadth of two inches, and of the length of three inches, and the said piece of paper or ticket shall be closely rolled up and bound, and then put within a lottery wheel; and in the like manner the name of the second applicant, and so of the third and the rest of the same tickets, in their order, till every of the applications so received, as aforesaid, being first severally rolled of equal size and shape, shall be put within the same wheel; and then other tickets, on each whereof shall be written a distinct number, beginning with number one, and proceeding, by the common arithmetical progression, till on the last thereof there be written the last or highest number of the said applications; which last mentioned papers or tickets, being first rolled up and bound in equal size and form with each other, shall be put within another lottery wheel; and after the said two kinds of tickets shall be disposed of, as above directed, within their respective wheels, the same wheels shall be turned about so many times, as to shake and intermix the respective tickets in each wheel; which being done, the same tickets shall be deliberately and singly drawn, one out of each wheel at a time, in the manner of a lottery; and the number first drawn out of the last mentioned wheel shall be considered as the number of the application to be drawn at the same time out of the other wheel, and as such shall be marked in the aforesaid list, over against the same application, and so of the second and third drawn, and of the rest thereof, until all of the said tickets be drawn as aforesaid: And the warrants to be issued on the said applications shall severally be numbered according to the decision of the said lottery, and shall bear date on the day in which the drawing thereof shall be finished: And all applications to the said Land-Office, which shall be made after the expiration of the said ten days, for lands within the said late purchase, being made as above directed, shall have priority according to the order in which they shall severally come to the hands of the said Secretary, and shall be numbered accordingly, and not otherwise; and all warrants for land within the said late purchase, as well those, the priority of which

Manner of
conducting
the lottery.

Warrants to
be numbered
according to
the lottery,
and dated
the day it is
finished.
Subsequent
applications
to obtain
priority,

shall depend upon the said lottery, as others, shall be made out in their proper order as aforesaid, upon payment of the legal fees, by the person who shall produce the acquittance of the said Receiver-General for the purchase money, as soon as conveniently may be, without any needless delay, and without partiality. 1785.

SECT. III. *And be it further enacted by the authority aforesaid,* That every warrant for land within the said late purchase shall be directed, by the Surveyor-General, to the deputy-surveyor of some one district within the same purchase, in order that the same warrant may be duly executed, and the quantity of land therein specified, surveyed and located, according to the tenor of such warrant; but if land, to the satisfaction of the person who shall have property in any such warrant, be not found within such district, then and in such case, the deputy-surveyor, to whom such warrant was directed, shall, on the desire of the person entitled to the same, certify, by indorsement thereon in writing, witnessed by two subscribing witnesses, that the same warrant has not been executed within his district, and shall re-direct the same warrant to the deputy-surveyor of some other district within the said late purchase; and upon producing the warrant, so certified as aforesaid, the deputy-surveyor, to whom the same may be directed, shall proceed upon and execute such warrant, in like manner, and with the like effect as if it had been so directed by the Surveyor-General.

from the times of their being presented.

Warrants to be directed to the deputy-surveyor of some district, for execution.

How they may be transferred to another district.

SECT. IV. *And be it further enacted by the authority aforesaid,* That no deputy-surveyor shall execute any such warrant as aforesaid, unless the same warrant be directed to him, as is above set forth, nor shall any deputy-surveyor proceed to measure any land upon any warrant within the said late purchase, until the expiration of thirty days from and after the day of the date of the warrant, which, for preference and priority, shall be dependent on the aforesaid lottery; and during the latter twenty of the said thirty days, each deputy-surveyor of lands within the said late purchase shall keep open his office, and give his personal attendance therein, for at least six hours in every of the said twenty days (Sundays excepted) for the purpose of receiving the warrants to be issued, and directed as aforesaid; and every such deputy-surveyor shall, on or before the first day of May next, certify, in writing, to the said Surveyor-General, the county, township and place, where such deputy-surveyor shall keep his office open for the purpose aforesaid, in order that all persons who may apply for lands as aforesaid may be duly informed thereof; and that every deputy-surveyor, who shall receive any such warrant, shall make fair and clear entries of all warrants put into his hands, in a book to be provided by him for that purpose, distinguishing therein the names of the grantees, quantities of land, number and date of each warrant, and the day on which such deputy-surveyor shall receive the same respectively, and whatever shall be done concerning every such warrant, which book shall be open at all reasonable hours to every applier, who shall be entitled to copies of any entry therein, to be certified as such, and signed by such deputy-surveyor.

No warrant to be executed, unless so directed; nor within 30 days after the date.

Deputy's office to be kept open,

and notice of its situation given to the Surveyor-General.

Warrants to be entered the day of receiving them,

and the book kept open.

SECT. V. *And be it further enacted by the authority aforesaid,* That after thirty days from the date of every such warrant, the priority of which shall depend on the lottery as aforesaid, but not

Warrants to be executed after 30 days from their date.

1785. sooner, the deputy-surveyor, to whom the same shall be directed as aforesaid, may and shall proceed to execute such warrant in the usual manner, if thereunto requested by the owner thereof, or his agent, giving preference always to the lowest in number of those unexecuted warrants which shall have come to his hands, in case the owner thereof, or his agent, shall be ready to proceed with the said deputy-surveyor, and to direct him to the place where such person shall be desirous that the same should be executed.

SECT. VI. *Provided always*, That none of the said warrants, that shall not be finally lodged and left with one of the deputy-surveyors of the lands within the said late purchase, for survey and location within the district of such deputy-surveyor, before the said thirty days be expired, shall be entitled to the priority aforesaid, but shall be considered as posterior to any warrant that shall have been lodged within the thirty days, and be surveyed and located accordingly.

SECT. VII. *Provided also*, That if any person having right to any warrant for the surveying of lands, within the said late purchase, shall fix upon, and shall desire that his warrant be located to a particular place or piece of vacant land, the deputy-surveyor of the district, in whose hands the warrant shall be, shall accordingly make an entry thereof in his aforesaid book, and shall afterwards proceed to survey the same upon such warrant, unless some person claiming under a warrant entitled to priority by the aforesaid lottery, shall insist upon having his survey made at the same place, in which case, the warrant which had been so located and superseded, as aforesaid, shall be entitled to a second location as before, liable to a claim, under another prior warrant, as before, and so *toties quoties*, till the same shall be undisputed: *Provided nevertheless*, That the person claiming to have land surveyed to him, under any warrant for land in the said late purchase, may, at any time before actual survey be made, renounce such location, and withdraw his or her warrant, and deliver the same warrant to the deputy-surveyor of any other district within the said late purchase, in the manner herein before provided and declared; and may afterwards again, in like manner, withdraw the same, and deliver it to the deputy-surveyor of another district, and so on, till the quantity of land therein mentioned be surveyed, and the same established in the order and manner aforesaid.

SECT. VIII. *And be it further enacted by the authority aforesaid*, That all warrants of survey that shall be issued by the said Land-Office of this state, after (and the priority of which shall depend on,) the drawing of the said lottery, for lands within the said late purchase, shall be executed in the order, and have preference of survey, as they shall severally be earliest delivered to the deputy-surveyor of the district, to whom they be directed, who shall make survey thereupon; and for that purpose, the said Surveyor-General shall register the same warrants, and every of them, in the order they shall come to his office, in the manner directed in respect to the warrant first aforesaid; and every survey of the lands within the said late purchase, which shall be made in pursuance of this act, and of the former acts of this commonwealth for opening and re-

Warrants not lodged before the 30 days are expired, lose priority.

Warrants located on specific lands, being superseded by a prior warrant, shall have a second location.

Before actual survey, a location may be renounced, and the warrant delivered to another surveyor, *toties quoties*.

Warrant issued after the priority given by the lottery shall be executed in order.

Proceedings therein.

gulating the Land-Office, shall be duly returned into the office of the said Surveyor-General, as soon as conveniently may be after such survey shall be made, upon the payment or tender of the fees to which such deputy-surveyor shall be legally entitled for his services therein; and if any such survey shall have been made on or before the thirty-first day of December, in any year, and shall not be returned into the office of the said Surveyor-General on or before the last day of March, in the year next following, the same survey shall be void, as to future surveys which shall be sooner returned, and filed in the office of the Surveyor-General; and if such avoidance shall happen by the neglect or default of the deputy-surveyor, who surveyed the same, such deputy-surveyor shall be answerable to the party thereby damaged, for all the damages he or she shall sustain by such neglect or default as aforesaid, and the party shall be entitled to a new warrant, to survey other land elsewhere, to satisfy his original application.

1785.

Surveys not returned within a specified time, void.

and the surveyor answerable in damages.

SECT. IX. *And be it further enacted by the authority aforesaid,* That every survey hereafter to be returned into the Land-Office of this state, upon any warrant which shall be issued after the passing of this act, shall be made by actual going upon and measuring of the land, and marking the lines to be returned upon such warrant, after the warrant authorizing such survey shall come to the hands of the deputy-surveyor, to whom the same shall be directed; and every survey made theretofore shall be accounted clandestine, and shall be void, and of no effect whatsoever; and every deputy-surveyor, upon request to him made, shall give a receipt, in writing, signed by him, to the person delivering any warrant of survey, for which the fee of six-pence shall be paid by the party requesting the same, in which receipt shall be set forth the day and year when, and the order in which, the same warrant shall have come to the hands of such deputy-surveyor, and also the grantee's name and surname, and the number of acres to be surveyed thereon, and also the number of the same warrant.

Surveys how to be made.

A receipt to be given for warrants

SECT. X. *And be it further enacted by the authority aforesaid,* That every deputy-surveyor shall, within the month of February in every year, make a general list, (and shall return the same into the office of the Surveyor-General,) of all the warrants, upon which he shall have made any survey during the year preceding, therein setting forth, in a summary manner, what quantity of land he hath surveyed upon each warrant distinguishing every warrant by its number, date, and the name of the grantee, and also the situation of every tract so surveyed, respectively.

Deputies to make a general return of their surveys in February annually.

SECT. XI. *And be it further enacted by the authority aforesaid,* That the appointment of all deputy-surveyors of lands in this state shall hereafter be by the said Surveyor-General, subject to the approbation of the President or Vice-President in Council, and the Surveyor-General shall be answerable for the persons so appointed; and that before the opening of the Land-Office for the late purchase as aforesaid, every deputy-surveyor then in office, and every deputy-surveyor thereafter to be appointed, shall give bond to the commonwealth, with two sureties, to be approved by the President or

Deputy surveyors how to be appointed.

Deputies to give bond.

1785.

Vice-President in Council, who shall be bound with such deputy-surveyor in the sum of one thousand pounds, conditioned for the due, faithful and equal discharge of his duty, according to law, which bond shall be recorded in the office for recording deeds in the proper county, and be liable to such use and suit, and be of like avail to persons damaged by such deputy-surveyor, as bonds given by the Sheriffs of this state are liable; and moreover, the Secretary of the Land-Office, the Receiver-General of the same, and the Surveyor-General of this state, and every deputy-surveyor now in office, and hereafter to be appointed, shall swear, or, being conscientiously scrupulous of taking an oath, shall affirm, as followeth: "**I, A. B.** do swear, (or do solemnly, sincerely and truly declare and affirm,) that **I** will do and perform the duties of the office of with fidelity and impartiality to all men;" which oath or affirmation shall be taken before one of the Justices of the Supreme Court, or one of the Justices of the Peace of the proper county; and the same being put into writing, signed by the officer taking the same, and by the said Justice, shall be filed in the office of the Clerk of the Peace of the county, wherein such officer shall execute his said office.

Land officers and deputy-surveyors to take an oath of office;

form of the oath.

Before whom to be taken,

and where filed

Districts for surveys how to be fixed or altered,

SECT. XII. *And be it further enacted by the authority aforesaid,* That the number of districts to be formed within the said new purchase, and the extent and boundaries of each of the same districts, shall be ascertained and declared by the Surveyor-General, to be approved of by the President or Vice-President in council, who at their discretion, may afterwards alter the same.

Islands and lands excepted from applications and surveys.

SECT. XIII. *And be it further enacted by the authority aforesaid,* That all islands within the bed of the river Susquehanna, and of the east or west branches thereof, and of the rivers Ohio, Allegheny and Delaware, which be within the said new purchase, together with the appropriated lands northwestward of the rivers Ohio and Allegheny, and the right of pre-emption of one thousand acres of land in the forks of Sinnemahoning, near the Great or Buffaloe swamp, which is hereby reserved and granted to General James Potter, shall be excepted and reserved from all such applications as are herein before mentioned, and from all surveys under the same; and the said islands, and every of them, may and shall be sold by public sale, or otherwise, by special order of the President or Vice-President in Council, concerning each of them, for the best prices that can be gotten for the same islands; and all occupancy, and every survey, claim, or pretences for holding the same islands, or any of them, by any other title, shall be utterly void, saving always the pre-emption heretofore granted to William Irwin, esquire, of Montour's island, in the river Ohio, and other the pre-emption rights heretofore granted by law.*

Islands to be sold by the Executive.

Claims on them, void, except as to pre-emption rights.

* [Chap. 2034.]

Any neglect, or refusal of duty, under this act, how to be punished,

SECT. XIV. *And be it further enacted by the authority aforesaid,* That if any officer, or other person, who is enjoined or required to do or perform any thing by this act, shall neglect or refuse to perform the same, he shall, (besides being liable to the party grieved for damages,) be punishable for his neglect or refusal as aforesaid, and likewise for any other misbehaviour, abuse of trust, and for any

fraud therein, by fine and imprisonment, at the discretion of the court of the proper county. 1785.

SECT. XV. *And be it further enacted by the authority aforesaid,* That in making any survey by any deputy-surveyor, he shall not go out of his proper district to perform the same, and that every survey made by any deputy-surveyor without his proper district shall be void and of none effect: And the Surveyor-General and his deputies are hereby severally directed and enjoined to locate and survey, or cause to be located and surveyed, the full amount of land contained and mentioned in any warrant, in one entire tract, in such manner and form, as that such tract shall not contain in front on any river more than one half of the length or depth of such tract, and to conform the lines of every survey in such manner, as to form the figure or plot thereof, as nearly as circumstances will admit, to an oblong of three times the breadth thereof. And in case any such survey should be found to contain a greater quantity of land, than is mentioned in the warrant on which it shall be made, so that such excess be not more than one tenth of the number of acres mentioned in such warrant, besides the usual allowance for highways, the return thereof shall nevertheless be admitted under the said warrant; provided the party procuring such return to be made shall forthwith pay to the Receiver-General of the Land-Office, the price or value of such excess or overplus land, at the same rate at which he paid for the land mentioned in the warrant. *Provided always,* That all and singular the lands to be located, surveyed and taken up, by virtue and according to the directions of this act, shall not be subject to, nor charged with, any general tax for the use of this state, or of the United States, for the term of two years from and after the passing of this act.

[SECT. XVI. *And be it enacted,* That the fees of the officers of the General Land-Office of this state shall be the following, and no other, viz. The fees of the secretary of the said Land-Office shall be these :

Receiving, filing and registering any application for land, and recording or entering of warrant, three shillings.

Every ticket to the Receiver-General, for the payment of the consideration money, and to the Surveyor-General, to examine if the land applied for be clear of prior claims or surveys, and for all other examinations, before a warrant be granted, and for the said warrant, eight shillings.

Acceptance of the Surveyor-General's return, examining the same warrant for the great seal, entry of the patent, lodging it in the office of the Master of Rolls, and for the patent on parchment, nineteen shillings.

Every office copy furnished, for every line thereof containing twelve words, one penny.

Attesting every such copy, and for seal, two shillings and six-pence.

Every caveat, three shillings and six-pence.

A citation, one shilling and six-pence.

A copy of judgment of the Board of Property, seven shillings and six-pence.

Deputies confined to their respective districts.

Warrants to be located in one tract.

form thereof.

Proceedings, in case a greater quantity is surveyed; the excess being paid for.

Lands free from tax for two years.

Fees of the Land-Office, viz.

Of the Secretary.

[Those parts within brackets are supplied by act of 20th of April, 1795, chap. 1652.]

1785.

Every recital of transference, one shilling and six-pence.

Every search, one shilling and six-pence, if found, and nine-pence, if not found.

For the great seal, six shillings.

For the lesser seal, two shillings and six-pence.

Of the Surveyor-General.

And the following fees, and no other, shall belong to the Surveyor-General :

For registering and filing every warrant for land issued by the secretary, for the copy thereof directed to his deputy-surveyor to execute, and the seal of his office affixed, seven shillings and six-pence.

Searching for a warrant return of survey, if the same be found, one shilling and six-pence.

Like search, if not successful, nine-pence.

Copies attested, and seal thereto, if six lines, at twelve words to the line, or less, two shillings and six-pence.

Copies attested, and seal thereto, if above six lines, the same fee, and for each additional line, twelve words to the line, one penny.

Making a return of every warrant, after survey made into the Secretary's office, recording the same, and for a draught of the land, fifteen shillings.]

Of the deputy-surveyors

And the fees of the deputy-surveyors of land shall be the following, and none other :

For surveying the first hundred acres, or less quantity, thirty shillings.

And for each hundred additional, five shillings.

For a whole lot or plot, with return, five shillings.

For copies attested, for each copy not exceeding six lines, at twelve words to the line, and if more, one penny for each line additional, one shilling and six-pence.

For the receipt of the copy of the warrant from the Surveyor-General, upon lodging the same with any of the deputies, six-pence.

Of chain carriers.

And the recompence of all chain carriers shall be as follows, viz.

To each chain carrier, three shillings per day, the person getting the survey to find a marker, and pay for the chain carriers.

Of the Receiver-General.

[And the fees of the Receiver-General of the Land-Office shall be the sums which follow, and no other :

For every search in his office, one shilling and six-pence, if found, and nine-pence, if not found.

For receiving and entering in his books any sum of money on account, two shillings and six-pence.

For every copy or transcript, for every line therein, containing twelve words, one penny.

For the office seal and certificate, two shillings and six-pence.

For final settlement, calculation, closing the account, receiving the money, and giving an acquittance for the same, including all necessary searches, seventeen shillings and six-pence.

For a certificate to the President in Council, of the payment of the full consideration, before the patent be sealed, two shillings and six-pence.]

These fees to be in full of all demands.

Which fees, as beforesaid, shall be in full of all duties and demands to be made by the said Secretary, Surveyor-General, and his deputies, and by the said Receiver-General, respectively.

[SECT. XVII. *And be it further enacted by the authority aforesaid,* 1783. That the said Secretary, Surveyor-General and Receiver-General, shall collect the said fees so assigned to their several offices respectively, and shall once in every three months account for the same upon oath or affirmation, and pay the monies thence arising to the Treasurer of this commonwealth, for the use of the commonwealth; and the said officers shall be entitled to the salaries herein after set forth and declared, to be paid to each of them quarterly, as the same shall become due, upon orders to be drawn by the President or Vice-President in Council, on the Treasurer of this state, out of the fees aforesaid; that is to say, to the Secretary of the Land-Office, the yearly sum of eight hundred pounds; to the Surveyor-General, the yearly sum of eight hundred pounds; to the Receiver-General, the yearly sum of eight hundred pounds; the same to continue two years, from and after the first day of May next; and that each of the officers aforesaid be further allowed a sum not exceeding three hundred pounds per annum for his clerk or clerks, besides a reasonable allowance for parchment, and other articles of stationery.]

The fees to be collected and paid over to the Treasurer by the respective officers.

Their salaries, and allowance for clerks.

[Altered and supplied.]

SECT. XVIII. *And be it further enacted by the authority aforesaid,* That all the land within the late purchase from the Indians, not heretofore assigned to any other particular county, shall be taken and deemed, and they are hereby declared, to be within the limits of the counties of Northumberland and Westmoreland, and that from the Kittanning up the Allegheny, to the mouth of Conewago creek, and from thence up said creek to the northern line of this state, shall be the line, between Northumberland and Westmoreland counties, in the aforesaid late purchase.

Lands in the new purchase assigned to the jurisdiction of certain counties.

Boundary between Northumberland and Westmoreland.

[Altered by the erection of new counties.]

Passed 8th April, 1783.—Recorded in Law Book No II. page 531.

CHAPTER MCLIV.

An ACT to vest the personal estate of the late Corporation of the Mayor and Commonalty of the city of Philadelphia in the Wardens of the said city; and to direct the immediate sale of the old gaol and work-house of the county of Philadelphia, and to appropriate the said personal estate, and part of the monies to arise from the sale of the said gaol and work-house, to the building of two court-houses, one for the said city, the other for the said county, on the State-house lot, in the said city, and for other purposes therein mentioned. (x)

SECT. VI. **AND** whereas, in and by the act of General Assembly, passed in the late province of Pennsylvania, on the seven-

(x) By the operation of the 1st, 2d, 3d, 4th, and 5th sections of this act, all the obligations and mortgages belonging to the old Corporation of the city of Philadelphia were vested in the corporation of the Wardens of the city, with power to recover these and all other monies due to the Mayor, &c. and to give proper releases and acquittances, upon payment of the same, but the debtors were allowed the indul-

gence of paying by instalments, agreeably to the act of the 23d of December, 1784 (See chap. 1112.) But by the act, of the 11th of March, 1789, for incorporating the city of Philadelphia, the authority of the Wardens of the city was extinguished, and the corporate estate and rights vested in the new Corporation.—See that act, and the acts there cited; and also see chap. 1090. (Note to former edition.)

1785. {
 tenth day of February, which was in the year of our Lord one thousand seven hundred and sixty-two, entitled "An Act for vesting the State-house and other public buildings, with the lots of ground whereon the same are erected, together with other lots situated in the city of Philadelphia, in trustees, for the uses therein mentioned;" it is declared in substance, that, upon the payment of fifty pounds for the use of the said province, one lot of ground, parcel of the said State-house lot, of the breadth of fifty feet on Chesnut-street, and of the length of seventy-three feet on Sixth-street, being the north-western corner of the said State-house lot, should be and remain to the use of the county of Philadelphia; and that upon payment of fifty pounds for the use of the said province, one other lot of ground, also parcel of the said State-house lot, of the breadth of fifty feet on Chesnut-street, and of the length or depth of seventy-three feet on Fifth-street, being the north-east corner of the said State-house lot, should be and remain to the use of the city of Philadelphia, with intent and purpose, that a public building should be erected on each of them, for holding of courts or common halls, for the use of the said city and of the said county, respectively, and that the said building should be made and constructed of like outward form or structure and dimensions.

[Passed
 22th of Fe-
 bruary,
 1780.]

SECT. VII. And whereas the said State-house, together with the adjoining lot and piece of ground thereunto appertaining, by an act of General Assembly of this commonwealth, entitled (*) "An Act for vesting the State-house, in the city of Philadelphia, the house in High-street, in the said city, appropriated to the use of the President of the Supreme Executive Council, for the time being, the Province-Island, and Great Mud-Island, the military barracks in the Northern Liberties of the city of Philadelphia, and in the northern part of the borough of Lancaster, the public store-house and magazine for securing gun-powder in the said borough; the several court-houses, gaols, prisons and work-houses of the several counties of this state, and all other real estate belonging to the public, in the commonwealth," was transferred from Samuel Rhoads and Edward Pennington, who survived the rest of the trustees aforesaid, was thereby vested in the commonwealth, subject to the several uses, intents, trusts, dispositions, and direction, for which the same had been theretofore appointed and limited, and to no other, and saving to all private persons, and bodies politic, their claims to the same, or any part thereof.

SECT. VIII. And whereas it appears to this House, that the commissioners for the county of Philadelphia, in behalf of said county, and the Wardens of the city of Philadelphia, on behalf of said city, have complied with the terms aforesaid, and have respectively paid to the Treasurer of this state the said sums of fifty pounds each, whereby the one described lot, the corner of Sixth and Chesnut-streets, and State-house square, is hereby vested in the commissioners of the county of Philadelphia, and their successors; and the other before described lot in the Wardens of the city, and their successors, for ever, for the respective uses and purposes aforesaid, and it is proper that the court-houses designed to be erected thereon should be built: (y) Therefore,

(y) By an act of the 29th day of March, 1787, the lots were enlarged.

1785.

[SECT. IX. *Be it further enacted by the authority aforesaid,* That the President or Vice-President in Council, shall, as soon as conveniently may be, direct the commissioners of the county of Philadelphia to set up to sale, and to sell by public auction, to the best and highest bidder, the old gaol and work-house of the county of Philadelphia, situate on High-street, and extending southerly by the west side of Third-street, in the said city, and the lot of ground thereto belonging, upon such terms of payment as they shall see convenient, and to receive the consideration money, and pay into the hands of the commissioners or trustees appointed for purchasing a lot of ground, and for erecting thereon a court-house and prison in and for the county of Montgomery, such part thereof as is apportioned and appropriated for that purpose, in and by an act of Assembly, passed the tenth of September last past, entitled (z) "An Act for erecting part of the county of Philadelphia into a separate county," (which said commissioners or trustees shall lay their accounts of the expenditures thereof before the Grand Jury of the said county of Montgomery, for their approbation and confirmation, and shall pay the overplus, if any, into the hands of the Treasurer of said county,) and to apply such further sum of said consideration money, not exceeding three thousand pounds in the whole, to the purpose of erecting the court-house aforesaid, on the north-west corner of the said State-house lot; and the residue of the money which shall arise from the sale of the said old gaol, work-house, and the lots thereto belonging, shall be added to, and expended as part of the public stock of the county of Philadelphia; and upon payment of the full price and consideration for the said lots sold as aforesaid, the President or Vice-President, in Council, shall execute deeds under the great seal, vesting in buyers of the same, or any part thereof, estates in fee-simple, subject to an irredeemable rent of an acorn per annum, for ever, payable, if demanded, to the commonwealth.

The old gaol and work-house to be sold.

The proceeds to be applied, partly to the use of Montgomery county.

Part not exceeding £. 5000, to erect a county court-house in Philadelphia;

and the residue to be added to the stock of Philadelphia county.

Deeds to be executed to purchasers.

SECT. X. *And be it further enacted by the authority aforesaid,* That the Wardens of the city of Philadelphia, of the monies which shall come into their hands out of the personal estate of the late Mayor and Commonalty of Philadelphia, as aforesaid, together with all interest which has or which shall accrue thereon, shall apply a sum not exceeding three thousand pounds, to the erecting a court-house on the north-eastern corner of the said State-house lot as aforesaid; and if the same personal estate shall fall short of completing the said building, such sums as shall be necessary shall be taken out of the common stock of the said city, in the hands of the Treasurer of the said Wardens; and after finishing the said building, if any of the monies arising as aforesaid shall be left, the same shall be added to the said common stock, and applied therewith to the same uses.

£. 3000, out of the personal estate of the late Corporation, to be applied to erect a City Hall.

Deficiency in that fund how to be supplied;

or, if a surplus, how appropriated.

SECT. XI. *And be it further enacted by the authority aforesaid,* That the commissioners of the county of Philadelphia, and the

(z) See chap. 1097, an act of the 13th of September, 1785, providing more effectually for the sale of the old gaol, &c. and an act of the 27th day of March, 1789, authorizing a lottery, in aid of the funds for building a City-Hall.

1785. *Wardens of the said city, shall submit the plans, whereby the said court-houses shall be erected, to the approbation of the President or Vice-President in Council, in order that their outward forms may be alike and uniform, as aforesaid.]*

and City-
Hall to be
submitted to
the Execu-
tive.

Passed 8th April, 1785.—Recorded in Law Book No. II. page 527.

CHAPTER MCLVI.

An ACT for establishing the office of a Register of all German passengers, who shall arrive at the port of Philadelphia, and of all indentures by which any of them shall be bound servants for their freight, and of the assignments of such servants in the city of Philadelphia. (a)

SECT. I. WHEREAS, by several acts of Assembly of the province of Pennsylvania, all masters of vessels, merchants and others, importing by land or by water, any men or women passengers or servants, are obliged, within the space of twenty-four hours after their arrival, to make entry, and give or cause to be given, upon oath or affirmation, to the officer for that purpose appointed, a true and just account of all the names of the servants and passengers so imported, which account the said officer should duly enter with the Mayor of the city of Philadelphia, if such passengers were designed to be landed at Philadelphia: And that the said Mayor should examine into the character and circumstances of such servants and passengers, and grant certificates, containing the names of all the servants or passengers which he should judge fit to be landed: And that every indenture, whereby any such German passenger should be bound to serve his or her master or mistress, should be acknowledged before the Mayor or Recorder of the city of Philadelphia, and he keep an exact record thereof, clearly expressing the province, county, city, borough or township, wherein such master or mistress resides, and that the said Mayor and Recorder in the said city should in like manner keep a record of the assignments of servants, therein expressing the places of the assignees abode:

SECT. II. And whereas, since the change of the government of Pennsylvania, the offices of Mayor and Recorder of the city of Philadelphia have been vacated, and the Justices of the Peace of the said city collectively, or any three of them, by an act of this commonwealth,* are empowered to do and perform certain special matters and things, formerly directed to be done and performed by the Mayor, Recorder and Aldermen of the said city; but no provision has been hitherto made by law for registering the names of the German passengers, who shall arrive at the port of Philadelphia, and taking the acknowledgment of the indentures of such

[* Act of
14th March,
1777, chap.
735.]

(a) The revival of the corporation, by the act of the 11th of March, 1789, does not appear to affect the establishment of the Register's office. For the

laws referred to in the preamble, see an act of the 27th of January, 1749 50, and an act of the 18th of May, 1765.

passengers as shall or may bind themselves servants for their freight : 1785.
 And whereas reason and justice require that the officer, who is to execute so important a trust for foreigners, should be fully acquainted with their language, and able to converse with them :

SECT. III. *Be it enacted, and it is hereby enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same,* That an office for registering all German passengers, who at any time hereafter shall arrive at the port of Philadelphia, and the execution of all such indentures, by which any of such passengers shall bind him or herself servants for their freight, shall be and is hereby established ; and that a person, understanding and speaking the English and German languages with ease and propriety, an inhabitant of the said city, in confidence and reputation with the public for his integrity and discretion, shall from time to time be appointed and commissioned by the President or Vice-President in Council, and, being duly sworn to the true and faithful performance of the several duties required of him by this act, before the Chief Justice or any one of the Judges of the Supreme Court of this state, shall be the Register of German passengers arriving in the port of Philadelphia, and, by virtue of his said office, shall use and exercise all the powers and authorities of a Justice of the Peace for the city and county of Philadelphia, as far as the same shall be required for the support and efficacy of his office, and the laws respecting the importation of German passengers, and binding them out servants, and not otherwise : And that the Health-officer, having received from the captain of any vessel importing German passengers the list of their names, shall, with his German interpreter, review all the said passengers on board, men, women and children, and enquire whether any of them are superannuated, impotent, or otherwise likely to become chargeable to the public, and make report thereof in writing to the said Register, who, if he approves thereof, shall enter the same in a book for that purpose to be kept by him, and transmit the original thereof to the office of the secretary of the Supreme Executive Council, and give his order and licence to land such of them as are returned sound, without any defect in mind and body.

An office for registering and indenting German passengers instituted.

Officer to be appointed who speaks the German language.

How qualified.

His powers and duties.

Health officer to report to him respecting German passengers.

The report to be recorded and transmitted to the Secretary.

Order to land.

Indentures and assignments to be made and acknowledged before the Register, or deputy.

Copies of entries to be given.

Fee of the Register.

SECT. IV. *And be it further enacted by the authority aforesaid.* That all indentures of such German passengers, men, women and children, by which they shall be bound to serve, and all assignments of servants made within the said city, shall be made and acknowledged before the said Register, or his lawful deputy, and by him certified, and the full contents thereof entered and registered in the same manner, and to the same effect, as servants' indentures and assignments of servants were heretofore by law made and acknowledged before the Mayor of the city of Philadelphia, and by him registered ; and that all persons whom it may concern shall be entitled to have a copy or abstract of such register.

SECT. V. *And be it further enacted by the authority aforesaid,* That the fees of the said Register shall be the same as were usually

1785. taken by the Mayors of the said city, until it shall be otherwise provided by act of Assembly.

Passed 8th April, 1785 — Recorded in Law Book No. II. page 522. (*b*)

(*b*) By an act concerning the education of German redemptioners, who are minors, passed 19th of March, 1810, all masters or mistresses of German redemptioners, who are minors, and who shall arrive at the port of Philadelphia after the passing of this act, shall give to the said redemptioner six weeks

schooling for every year of his or her term of servitude; and it shall be the duty of the Register of German passengers, to insert the same fully in their indentures.

(See chap. 49, vol. 1, page 10, and the notes thereto subjoined.)

CHAPTER MCLVII.

An ACT to repeal part of an act of Assembly, entitled "An act to prevent the erecting any new and independent state within the limits of this commonwealth," so far as it directs trial for offences in another county, than that in which the offence was or might have been committed.

[Original act, ante. chap. 989, pa. 60.]

SECT. I. WHEREAS, by the common law, trial is by jury of the vicinage, and in Pennsylvania the trial of offences has invariably been by good and lawful men of the county, wherein the offence was committed: And whereas it is declared and established by the constitution of this commonwealth, that trial shall be by jury, as heretofore: And whereas, in and by an act of Assembly of this commonwealth, entitled "An act to prevent the erecting any new and independent state, within the limits of this commonwealth," enacted on the third day of December, in the year of our Lord one thousand seven hundred and eighty two, it was enacted, that if any person or persons should commit any offence against the said act, every such offender might be tried, at the discretion and upon the order of the Supreme Executive Council, in any other county than that in which the offence should have been committed:

Repeal of so much of an act, as authorizes the trial of offences out of the proper county.

SECT. II. *Be it enacted, and it is hereby enacted, by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same, That the act, entitled "An act to prevent the erecting a new and independent state, within the limits of this commonwealth," so far as it directs, enables or countenances the trial of any person or persons, charged with offence or offences in another county, than the county wherein such offence was done or committed, or alleged to be done or committed, shall be, and the same is hereby, repealed, and made null and void.*

Passed 31st August, 1785 — Recorded in Law Book No. II. page 542.

CHAPTER MCLVIII.

An ACT for incorporating the German Lutheran congregation of Germantown township, in the county of Philadelphia, in the state of Pennsylvania.

Passed 31st August, 1785. — Private Act — Recorded in Law Book No. II. page 543.

CHAPTER MCLIX.

1785.

A SUPPLEMENT to the act, entitled "An act for building market-houses, and keeping a public market, on both sides of Callowhill-street and New Market-street, in the Northern-Liberties of the city of Philadelphia."

SECT. I. WHEREAS, by an act of the General Assembly of Pennsylvania, entitled "An act for building market-houses, and keeping a public market, on both sides of Callowhill-street and New Market-street, in the Northern-Liberties of the city of Philadelphia," passed on the sixth day of September, in the year of our Lord one thousand seven hundred and eighty-three, it is, among other things, enacted, "That it shall and may be lawful for the freeholders and inhabitants of the Northern-Liberties of the said city of Philadelphia, annually, until all the money borrowed on certificates shall be fully paid, at the time and place for electing supervisors of the highway, then and there to choose, by ballot, six superintendants of the said Callowhill market, and also one clerk of the said market."

[Original act,
in the Chap.
1015, pa. 58.]

SECT. II. And whereas the present superintendants of the said market, and others, subscribers for building the said market, have, by their petition, represented to this House, "That at the time when the aforesaid act was passed, they flattered themselves that an establishment of such public utility would meet with the general approbation of the inhabitants of the said township, and that every one would be ready to assist and forward the design, either by donations, or loans, according to their respective abilities, and thereby become entitled to a right in the choice of the superintendants; but that they are under the disagreeable necessity of informing this House, that they did not meet with the expected success, that the number of subscribers is but small, and that, in order to complete the said market, the present superintendants were obliged to build three fourth parts thereof at their own expense, by reason whereof they are considerable sums in advance to the said establishment; that, by the aforesaid law, the appointment of the superintendants would expire on the third Saturday of March in every year, when others were to be elected in their stead, agreeably to the tenor of the said law, on which occasion it might happen, that the choice might fall on persons who were not friendly to the establishment aforesaid, and from motives of self-interest, or other sinister views, delay the distribution of the income and profits of the said market, among the lenders or subscribers, whereby the good purposes intended by the said act would be frustrated, and those persons, who freely lent their money for the public good, prejudiced;" and have prayed this House to pass a law, enabling the subscribers to appoint the superintendants, and a clerk of the said market, until all the money borrowed on certificates shall be fully paid and satisfied, and to repeal so much of the aforesaid act, as relates to the election of the superintendants and a clerk of the market, until all the money borrowed on certificates, as aforesaid, shall be fully paid: And it appearing just and reasonable to this House, that the said prayer should be granted: Therefore,

1785.

The subscribers to the Callowhill market empowered to elect superintendants and a clerk of the market, till the money borrowed for the building is paid; after which two superintendants and the other officers to be chosen by the freeholders.

Suspension of a part of the former law, for the above purpose.

SECT. III. *Be it enacted, and it is hereby enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same,* That it shall and may be lawful to and for the subscribers for building the market-houses on Callowhill and New Market-streets, in the Northern-Liberties aforesaid, to meet on the third Saturday of March, in every year, at some convenient place in the said township, and then and there elect or appoint out of their number six fit persons, to serve as superintendants of the said market, and one fit person as a clerk of the said market, so long, until by the income and profits of the said market all the money borrowed on certificates, or is otherwise due to the present superintendants and workmen, for building the said market, shall be fully paid and satisfied; and that thereafter, and from thenceforth, no more than two superintendants, a clerk of the market, and one treasurer, shall be annually elected by the freeholders and electors of the said township of the Northern-Liberties, agreeably to the directions of the aforesaid act.

SECT. IV. *And be it further enacted by the authority aforesaid,* That so much of the act of Assembly, to which this is a supplement, as relates to the electing annually six superintendants and one clerk of the market, until all the money borrowed on certificates be fully paid, be, and the same is hereby, repealed, and made void.

Passed 31st of August, 1785—Recorded in Law Book No. II. page 549.

CHAPTER MCLXI.

An ACT for confirming a road and establishing a ferry, and erecting a bridge across the Neshaminy creek.

SECT. 1. **WHEREAS** Charles Bessonet, of the borough of Bristol, in the county of Bucks, and Gershom Johnson, of the city of Philadelphia, proprietors of the stages from Philadelphia to Trenton, on the New-York road, by their petition to the legislature, have set forth, "That being actuated by principles of public good, as well as their own private advantage, they have made a purchase of land for a public road or highway, forty feet wide, beginning at the sixteen mile stone, on the road already laid out from the city of Philadelphia, to the borough of Bristol, in Bucks county, and from thence, along the old road, north forty-seven degrees east, forty perches, to the intersection of the present road leading to Neshaminy ferry, and the south west line of Joshua Vandegrift's land; thence, on the same land, north forty-seven degrees east, ninety-four perches; thence north twenty-six degrees east, fifty-four perches, to the north east line of said Vandegrift's land; thence, through land of William Allen, north seventy-two degrees and a quarter east, eighty-eight perches and eight tenth parts of a perch; thence, still through the same land, south seventy degrees east, eight perches, to the water's edge at Neshaminy creek, at high water mark; thence across the said Neshaminy creek, south seventy-six degrees and three quarters east, twenty-one perches, to high water mark, and a poplar tree on

the Bristol side thereof; thence, on land of John Edgar, north eighty-three degrees and an half east, four hundred and thirty-seven perches; thence, through land of Joseph Tomlinson, south seventy-nine degrees east, fifty-eight perches and eight tenth parts of a perch, to the Old Ford road, leading from Neshaminy to Bristol; thence, on the said road, south sixty-nine degrees east, one hundred and twenty-seven perches, to the junction of the said Ford road, and the road leading from Bristol to the present ferry over Neshaminy aforesaid; and from thence to the nineteen mile stone, on the road leading from Philadelphia to Bristol, south sixty-four degrees and an half east, thirty-two perches; making, in all, the distance of three miles and eight tenth parts of a perch, with an intent of establishing a ferry or bridge across the said creek; and for which purpose they will build and run out wharves at the landing places on each side of the said creek, and build flats or boats to accommodate travellers for the present, at their own private cost and charges, until said bridge shall be finished; and therefore have prayed for a law for establishing the said ferry and bridge, when built, and vesting the premises in them, their heirs and assigns, with liberty to take such toll or fees from travellers, as may be thought reasonable and just; promising also, that if, at any future day, the legislature should think proper to vest the said bridge proposed to be built in the public, for the purpose of a free bridge, they will give up the said bridge, upon their receiving a reasonable compensation for their trouble and expenses, to be estimated by indifferent persons, chosen equally by the parties; and it being fit and right to encourage all laudable undertakings for the improvement of the ways, and the good of the public: Therefore,

SECT. II. *Be it enacted, and it is hereby enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same,* That the property of the said ferry and bridge, when built, shall be vested in the said Charles Bessonnet and Gershom Johnson, their heirs and assigns, according to the form, true intent, and meaning of the several deed or deeds of conveyance of the premises herein before recited and described, and subject to such limitations, restrictions and appointments, as in and by the said deed or deeds are contained or expressed; and that the said Charles Bessonnet and Gershom Johnson, their heirs and assigns, shall and may demand and receive such rates for ferriage of travellers and others, and such tolls for the passage across the said bridge, as shall or may be directed and appointed by the court of General Quarter Sessions of the peace in and for the county of Bucks, which court are hereby authorized and required, from time to time, to regulate, fix and appoint the same; and, in default of such regulation, to demand and receive reasonable ferriages and tolls.

SECT. III. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful to and for the said Charles Bessonnet and Gershom Johnson, their heirs and assigns, to erect and build, maintain, support and repair the said bridge, and the aforesaid road, and to build and repair the said wharves, at the place and in the manner herein before recited, and to proceed in all things according

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The Neshaminy ferry and bridge vested in C. Bessonnet and G. Johnson;

who may demand such ferriage, or toll, as the Quarter Sessions shall fix;

or if not so fixed, as shall be reasonable.

The parties empowered to build the bridge;

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to the prayer of their petition herein before recited, and the true intent and meaning of this act.

Provided the same is duly attended, and capable of being opened for the passage of vessels.

SECT. IV. *Provided always*, That the said bridge, so to be erected and built, shall be constructed in such manner, and duly attended with sufficient persons to manage and direct the said bridge, so that the same shall be capable of being opened, and shall be actually opened by the said Charles Bessonnet and Gershom Johnson, their heirs and assigns, from time to time, to admit shallops, flats and boats, to pass and repass through the same, without delay or obstruction.

If the legislature should hereafter make the bridge free, mode of compensating the parties.

SECT. V. *Provided also, and be it further enacted by the authority aforesaid*, That whensoever, at any time after the erection or building of the said bridge, it shall seem expedient to the legislature to constitute and make the said bridge, so erected and built, a free bridge, by a law, to be enacted for that purpose, three commissioners shall be appointed by the legislature on the part of the commonwealth, and three by the said Charles Bessonnet and Gershom Johnson, their heirs or assigns, who, or any four or more of them, shall estimate what sum or sums of money the said Charles Bessonnet and Gershom Johnson, their heirs and assigns, shall be entitled to receive, as a compensation for their trouble and expenses in building and maintaining the said bridge, which sum or sums shall be paid to them out of the treasury of this commonwealth.

Passed 6th September, 1785.—Recorded in Law Book No. III. page 1.

CHAPTER MCLXIV.

An ACT to regulate the general elections of this commonwealth, and to prevent frauds therein. (c)

Election districts of the city and county of Philadelphia.

BE it enacted, and it is hereby enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same, That the elections for the city of Philadelphia shall be holden at the State-house in the city of Philadelphia. And the elections for the county of Philadelphia, exclusive of the city of Philadelphia, which for that purpose shall be divided into two districts; *viz.* The freemen of the townships of Germantown, Roxborough and Bristol, shall hold their elections at the Union school-house, in Germantown; and the free-

(c) All the provisions of this act have been repealed and supplied, except such part thereof as respects Election Districts. Most of the Election Districts have also been altered or limited by subsequent acts, and others erected in each county. For the existing law regulating the General Elections within this commonwealth, see chap. 2009, and for the various alterations that have been made in the Election Districts, in the several counties of the state, see the titles, Election Dis-

tricts, and the name of the County, in the index. (*Note to former edition.*) [The act is however retained, as all other Election District acts are. Although many of them must be entirely obsolete by reason of subsequent alterations. But no editor who is not acquainted with the situation of every township in every county, could explain the actual situation of Election districts. But to the citizens of the counties, respectively, they will be intelligible.]

men of the other townships in the said county shall hold their elections at the State-house, in the said city.

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And the elections for the county of Bucks, which for that purpose is divided into two districts, shall be holden at two places, to wit, the freemen of the townships of Milford, Richland, Springfield, Durham, Haycock, Nockamixon, Tinicum, Bedminster, Rockhill, Hilltown, Plumstead and New-Britain, being the first district, shall hold their elections at the house of Abraham Keichlein, inn-keeper; and the freemen of the rest of the townships of the same county shall hold their elections at the court-house at Newtown, in the said county.

of Bucks;

And the elections for the county of Chester, which for that purpose shall be divided into four districts, shall be holden at four places, viz. the freemen of the townships of Chester, Upper-Chichester, Lower-Chichester, Bethel, Ashton, Concord, Middletown, Thornbury, Birmingham, Nether-Providence, Upper-Providence, Ridley, Marple, Springfield, Darby, Haverford, Newtown, Edgemont, Radnor, Eastown and Tinnicum, being the first district, shall hold their elections at the town of Chester; the freemen of the townships of London-Grove, East-Marlborough, West-Marlborough, Kennet, Pennsbury, New-Garden, London-Britain, New-London, Londonderry, East-Nottingham, West-Nottingham, Oxford, and West-Fallowfield, being the second district, shall hold their elections at Chatham, formerly called the Half-way-House: the freemen of the townships of West-Whiteland, East-Caln, West-Caln, West-Nantmill, East-Bradford, West-Bradford, Newlin, East-Fallowfield, and Sadsbury, being the third district, shall hold their elections at the sign of the Pennsylvania Arms, at the house of John Culbertson, Esquire, in the said township of East-Caln; the freemen of the townships of Charlestown, Tredyffrin, Uwchland, Pikeland, Vincent, Coventry, East-Nantmill, East-Whiteland, Goshen, Westown and Willistown, being the fourth district, shall hold their elections at the Yellow-Springs, in the township of Pikeland aforesaid.

of Chester;

And the elections for the county of Lancaster, which for that purpose shall be divided into four districts, shall be holden at four places, to wit, the freemen of the borough of Lancaster, and of the townships of Lancaster, Manheim, Manor, Lampeter, and Conestogoe, being the first district, shall hold their elections at the court-house in the borough of Lancaster; the freemen of the townships of Little-Britain, Dromore, Martic, Bart, Colerain, Sadsbury and Strasburgh, being the second district, shall hold their elections at the house of Colonel James Porter, in the township of Dromore aforesaid; the freemen of the townships of Donegal, Mountjoy, Rapho, Hempfield, Elizabeth and Warwick, being the third district, shall hold their elections at the house of Captain Hugh Peden, in the township of Rapho aforesaid; and the freemen of the townships of Salisbury, Earl, Caernarvon, Brecknock, Cocolico and Leacock, being the fourth district, shall hold their elections at the house of Thomas Henderson, at Newholland, in the township of Earl, aforesaid.

of Lancaster;

And the elections for the county of York, which for that purpose shall be divided into five districts, shall be holden at five places, to wit, the freemen of York-Town, and the townships of York, Man-

of York;

1785. chester, Dover, Codorus, Shrewsbury, Windsor and Hellam, being the first district, shall hold their elections at the court-house of the same county, in York-town; the freemen of the townships of Cumberland, Hamilton's-Baan, Straban, Mountjoy, Menallan and Tyrone, being the second district, shall hold their elections at Samuel Gettis's; the freemen of the townships of Heidelberg, Berwick, Mount-Pleasant, Manheim, Paradise and Germany, being the third district, shall hold their elections at Hanover-town: the freemen of the townships of Fawn, Hopewell and Chanceford, being the fourth district, shall hold their elections at Turner's mill, in the township of Chanceford aforesaid; and the freemen of the townships of Newberry, Warrington, Monahan, Huntingdon and Reading, being the fifth district, shall hold their elections at the house of the late Robert Stevenson.

of Cumberland;

The elections for the county of Cumberland, which for that purpose shall be divided into four districts, shall be holden at four places, to wit, the freemen of the town of Carlisle, and of the townships of East-Pennsborough, West-Pennsborough, Allen, Middletown, Newtown and Hopewell, being the first district, shall hold their elections at the court-house in the town of Carlisle; the freemen of the townships of Rye, Tyrone and Teboyn, being the second district, shall hold their elections at the house of William McClure, Esq. in the township of Tyrone aforesaid; the freemen of the townships of Greenwood, Fermanagh, Leek and Milford, being the third district, shall hold their elections at the house of Thomas Wilson, in the township of Milford aforesaid; the freemen of the townships of Derry, Armagh and Wayne, being the fourth district, shall hold their elections at the house of Arthur Buchanan, in the township of Derry aforesaid.

of Berks;

And the elections of the county of Berks shall be holden at the county court-house in the town of Reading.

of Northampton;

And the elections of the county of Northampton, which for that purpose is divided into four districts, shall be holden at four places, to wit, the freemen of the town of Easton, and of the townships of Easton, William, Lower-Saucon, Bethlehem, Forks, Mount-Bethel and Plainfield, being the first district, shall hold their elections at the county court-house in Easton aforesaid; the freemen of the townships of Northampton, Salisbury, Upper-Saucon, Upper-Milford, Macungy, Weisenburgh, Lynn, Whitehall, Heidelberg and Lowhill, being the second district, shall hold their elections at the town of Northampton; the freemen of the townships of Allen, Moore, Chesnut-Hill, Towamensing, Penn and Lehigh, being the third district, shall hold their election at the house of Peter Anthony, in Lehigh aforesaid; and the freemen of the townships of Hamilton, Lower-Smithfield, Delaware and Upper-Smithfield, being the fourth district, shall hold their elections at the house of Nicholas Depui, in Lower-Smithfield township aforesaid.

of Bedford;

And the elections of the county of Bedford, which for that purpose is divided into five districts, shall be holden at five places, to wit, the freemen of the town of Bedford, and of the townships of Bedford, Colerain, Providence and Cumberland Valley, being the first district, shall hold their elections at the court-house of the same

county, in Bedford town; the freemen of the townships of Bethel and Air, being the second district, shall hold their elections at the house of Ephraim Wallace, in the township of Bethel aforesaid; the freemen of the townships of Barre, Hopewell, Frankstown and Huntingdon, being the third district, shall hold their elections at the place called the Standing-stone; the freemen of the townships of Brothers Valley, Quesmahoning, Turkey Foot and Wilford, being the fourth district, shall hold their elections at the house of James Black, in the township of Quesmahoning aforesaid; and the freemen of the townships of Dublin and Shirley, being the fifth district, shall hold their elections at the house of George Cuggage, in the township of Shirley aforesaid.

And the elections of the county of Northumberland, which for that purpose is divided into four districts, shall be holden at four places, to wit, the freemen of the townships of Augusta, Penns and Mahony, being the first district, shall hold their elections at the town of Sunbury; and the freemen of the townships of Turbit, Mahoning, Wioning, Shawanee and Stoke, being the second district, shall hold their elections at the town of Northumberland; the freemen of the townships of Buffaloe, White Deer and Potter, being the third district, shall hold their elections at Foutz's formerly, now Green's mill, in Buffaloe aforesaid; and the freemen of the townships of Munsey and Bald Eagle, being the fourth district, shall hold their elections at the house of Amariah Sutton, in Munsey aforesaid; and the freemen who reside without the bounds of any township, but within the said county, shall hold their elections at the place appointed for the fourth district as aforesaid.

And the elections for the county Westmoreland, which for that purpose is divided into five districts, shall be holden at five places, to wit, the freemen of the said county, who reside on the north side of the Kiskeminetas and Connemach, being the first district, shall hold their elections at the dwelling house of Samuel Dickson; the freemen of the said county, bounded by the Laurel hill, Connemach, the Chesnut-ridge and Fayette county line, being the second district, shall hold their elections at the house occupied by William Jameson; the freemen of the townships of Huntingdon and Rastrover, being the third district, shall hold their elections at the dwelling-house of William Moore, in the township of Rastrover aforesaid; the freemen of the township of Fort-Pitt, being the fourth district, shall hold their elections at the dwelling-house of Devereux Smith, in the town of Fort-Pitt; and all the freemen residing in the said county, who are not included in the aforementioned districts, shall hold their elections at Hanna's-town.

And the elections for the county of Washington shall be holden at the court-house in the same county.

And the elections for the county of Fayette shall be holden at the court-house in Union town.

And the elections for the county of Franklin shall be holden in two places, to wit, the freemen of the several townships in the said county, (except the township of Fannet,) being the first district, shall hold their elections at the court-house in the said county; and

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of Montgo-
mery;

the freemen of the township of Fannet aforesaid, being the second district, shall hold their elections at the house of the widow Elliot, in the said township.

and of Dou-
phin.

And the elections for the county of Montgomery, which for that purpose is divided into three districts, shall be holden at three places, to wit, the freemen of the townships of Norriton, Plymouth, Whitpain, Upper-Merion, Lower-Merion, New-Providence, Worcester, Skippack and Perkiomen, being the first district, shall hold their elections at the court-house; the freemen of the townships of Whitmarsh, Springfield, Cheltenham, Abington, Moreland, Horshan, Upper Dublin, Gwynedd, Montgomery, Hatfield, Towamensing, Lower Salford and Franconia, being the second district, shall hold their elections at George Eckart's tavern, in Whitmarsh; and the freemen of the townships of Limerick, New Hanover, Douglass, Upper Hanover, Marlborough and Upper Salford, being the third district, shall hold their elections at Michael Krepe's tavern, in New Hanover.

And the elections for the county of Dauphin, which for that purpose is divided into four districts, shall be holden at four places, to wit; the freemen of the townships of Heidelberg, Lebanon, Bethel and East Hanover, being the first district, shall hold their elections at the house now occupied by Anthony Kechler, in the town of Lebanon; the freemen of the townships of Derry, Londonderry and West Hanover, being the second district, shall hold their elections at Peter Friedley's, in Hummel's town, in the said township of Derry; the freemen of the townships of Lower Pextang, being the third district, shall hold their elections at the court-house in the said county; and the freemen of the township of Upper Pextang, on the north side of Peter's mountain, being the fourth district, shall hold their elections at the house of Peter Hoffman, in Upper Pextang aforesaid.

Passed 13th September, 1785.—Recorded in Law Book No. III. page 5.

CHAPTER MCLXV.

An ACT to appoint trustees to purchase a piece of land, within described bounds, and thereon to erect a court-house and prison, for the use of the county of Westmoreland. (d)

SECT. I. WHEREAS the seat of justice for the county of Westmoreland hath not heretofore been established by law, for

(d) By an act of the 27th of December, 1786, the powers given to the commissioners, by the above act, and the acts passed on the 26th of February, 1773, and the 22d of March, 1784, (chap. 106,) to purchase land, and erect thereon a court-house and gaol for the county of Westmoreland, were superseded, until the legislature should further and

otherwise direct; and the mode of settling their accounts was prescribed. But the suspending law was repealed, by an act of the 14th of February, 1789. See another act, (chap. 1803,) confirming a sale of certain lots of ground made by the trustees, appointed by this act. (Note to former edition.)

want of which the inhabitants of said county labour under great inconveniences : For remedy whereof,

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SECT. II. *Be it enacted and it is hereby enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same,* That it shall and may be lawful for Benjamin Davis, Michael Rough, John Shields, John Pomroy, and Hugh Martin, of the county of Westmoreland, or any three of them, to purchase and take assurance, in the name of the commonwealth, of a piece of land, in trust for the use of the inhabitants of Westmoreland county : Provided said piece of land be not situate further east than the nine-mile run, nor further west than Brushy run, further north than Loyalhanna, nor further south than five miles south of old Pennsylvania road leading to Pittsburg; on which piece of ground said commissioners shall erect a court-house and prison, sufficient to accommodate the public service of the said county.

Commissioners appointed to purchase a piece of land for the use of the county, within certain boundaries.

[SECT. III. *And be it further enacted by the authority aforesaid,* That for defraying the charges of purchasing the land, and building and erecting the court-house and prison aforesaid, it shall and may be lawful to and for the commissioners of the said county to assess and levy, and they are hereby required to assess and levy, so much money as the said trustees, or any three of them, shall judge necessary for purchasing the said lands, and finishing the said court-house and prison: Provided that the sum of money so to be raised does not exceed the sum of one thousand pounds, current money of this state.

The expense how to be defrayed;

and limitation of the amount.

SECT. IV. *And be it further enacted by the authority aforesaid,* That the act of General Assembly of this commonwealth, entitled "A supplement to an act for erecting a part of the county of Bedford into a separate county," shall be, and the same is hereby, repealed, and made null and void.]

[Repeal of a preceding law. [Chap. 1069.]

Passed 13th September, 1785.—Recorded in Law Book No. III. page 22.

CHAPTER MCLXIX.

An ACT to compel the speedy settlement, and the paying or securing of the debts due to this state for lands held by location or other office right, obtained before the tenth day of December, one thousand seven hundred and seventy-six, and yet remaining unpaid.

SECT. I. **WHEREAS**, in and by an act of the General Assembly of this commonwealth, passed the seventh day of April, one thousand seven hundred and eighty-one, entitled "An act for emitting the sum of five hundred thousand pounds, in bills of credit, for the support of the army, and for establishing a fund for the redemption of the same, and for other purposes therein mentioned," it was enacted and declared, that, together with the guarantee of the honour and faith of Pennsylvania, which was thereby given, so much as should be sufficient of the arrearages and sums of money due to this state, for lands theretofore granted or claimed by virtue

[See chap. 1033 ante, pa. 10., and the notes thereto subjoined.] (The whole of this act, except the 9th and 10th sections, is obsolete.)

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of warrants, locations surveys, or any other title, that might be deemed good and valid according to the law, custom or usage, in force under the late government, should be, and thereby was pledged and declared to be a fund, out of which the bills of credit aforesaid should be redeemed and cancelled, within the term of five years from the passing of the said act; that is to say, the one fifth thereof yearly and every year, until the whole should be redeemed and cancelled as aforesaid:

SECT. II. And whereas, in and by one other act of the General Assembly, passed the ninth day of April, one thousand seven hundred and eighty-one, entitled "An act for establishing a Land-Office, and for other purposes therein mentioned," it was, among other things, enacted and declared, that all purchase money due for lands in this state, taken up, or entries thereof made, by any grant, licence, warrant, application, or office right whatever, before the tenth day of December, one thousand seven hundred and seventy-six, should be paid in to the Receiver-General of the Land-Office, the one fourth part thereof in one year, one other fourth part thereof in two years, one other fourth part thereof in three years, and the residue thereof in four years, after the passing of the said act, under certain penalties in the said act mentioned, and that on the payment of such purchase money, together with the legal fees of office, patents, duly executed, should be issued for every such tract or parcel of land:

SECT. III. And whereas, in and by another act of the said General Assembly, passed the fifth day of April, one thousand seven hundred and eighty-two, entitled "An act to vest certain powers in the President of the state, together with the other officers therein named, and for other purposes therein mentioned," it was, for the reasons therein mentioned, among other things, enacted and declared, that the said respective times and periods affixed and mentioned by the act aforesaid, for the payment of the purchase money due on the lands aforesaid were and should be enlarged for the space of two years, over and above the said dates and times respectively:

[Chap. 963.]

SECT. IV. And whereas a large proportion of the debts, so as aforesaid assigned and pledged as a fund for the redemption of the bills of credit emitted by virtue of the act first above recited, still remain due to the state, and it is just and necessary that the same should be duly collected, and that the said bills of credit should be redeemed and cancelled, according to the true intent and meaning of the several acts herein before recited:

SECT. V. And whereas, from the scarcity of money yet prevailing in such parts of the state as have, till lately, been desolated or disturbed by hostile invasion, some of the persons indebted to the state as aforesaid may be unable to pay the whole of their respective debts, within the times limited and described by law, and it is the desire of the legislature to grant to such persons such further relief and indulgence, as may be given consistently with the honour and interests of the state: Therefore,

SECT. VI. *Be it enacted, and it is hereby enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same, That it*

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Proceedings,
in the case of
lands upon
rights accru-
ing before
the 10th of
December,
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shall and may be lawful to and for all and every person or persons, who are or shall be entitled, either in law or equity, to any lands in this state, within the limits of the purchase or purchases made from the Indians before the declaration of the independency of the United States, by virtue of any grant, warrant, location, or office right whatsoever, made or accrued before the tenth day of December, in the year of our Lord one thousand seven hundred and seventy-six, upon which a patent or patents have not been issued, and such person and persons are, hereby, severally enjoined and required, as soon as conveniently may be, to apply to the proper officers of the Land-Office, and to settle and adjust the sum and sums of money due to the state, for the purchase of such lands respectively, and to pay or secure the same in manner herein after mentioned; that is to say, on the settlement and ascertainment of the sum of money due, for principal and interest, on any such tract or parcel of land, the debtor, or party rightfully claiming a patent for such land, may pay the sum of money so due, or any part thereof, in such manner as is now lawful for making such payment, or secure the same, by giving bond for the whole, or the residue thereof, as the case may be, to the President of the Supreme Executive Council for the time being, for the use of the state, conditioned for the payment of the sum due, in five equal annual payments, together with the whole interest which shall be due on such bond, at each and every of the said periods respectively, the first of which said payments shall become due, and be paid, on or before the tenth day of April, which will be in the year of our Lord one thousand seven hundred and eighty-seven, and the said bonds shall be so drawn and construed, as that each and every of the said annual payments may be prosecuted for, and recovered, as they respectively become due, as fully and effectually, as if the time for making the last and final payment were elapsed; and upon such bond duly executed being lodged with the Receiver-General of the Land-Office, he shall certify the same, and the party rightfully claiming, shall, thereupon, and on payment of legal office fees, be entitled to and receive a patent for such lands, in such manner as if the purchase money were fully paid: *Provided always,* That such patent shall not be available, so as to entitle the party obtaining the same, to grant, convey or mortgage the lands or estate therein mentioned, other than to the President, for the use of the state, until the grantee or grantees, therein named, shall have made and duly executed a mortgage for the estate therein granted to the President as aforesaid, for the further securing of the payments to be made, according to the terms and conditions of the aforesaid bond, which mortgage the said Receiver-General is hereby authorized and directed to procure and take in every such case, and to endorse a note of the sum due, and conditions of payment, on the back of every such patent.

SECT. VII. *And be it further enacted by the authority aforesaid,* That every such mortgage as aforesaid shall be recorded in the office of the Secretary of the Land-Office, in a book to be provided and kept by the said Secretary, which record shall be as good and available, to all intents and purposes, as if such mortgage had been

Patentees to
execute
mortgages of
their lands,
for securing
the payment
of the purchase money

Such mortgages, how
and where
to be recorded.

1785. recorded in any other office or county within this state, any law, usage or custom, to the contrary in anywise notwithstanding.

Fee for certifying and recording bonds and mortgages.

SECT. VIII. *And be it further enacted by the authority aforesaid,* That the Receiver-General of the Land-Office, for drawing, taking and certifying every such bond and mortgage as aforesaid, shall be entitled to demand and receive, from the party executing the same, the sum of seven shillings and six-pence, and no more; and the Secretary of the Land-Office, for recording and certifying, in the usual manner, on the back of every such mortgage, that it is recorded, shall be entitled to receive, from the said party, five shillings, and no more.

SECT. IX. And whereas many of the settlers upon the lands on the northern and western frontiers of this state have been very great sufferers by the ravages of the Indians during the late war, and thereby have, for many years, been prevented from the cultivation of the lands possessed by them, and it is reasonable, that during the continuance of the late war the interest accruing upon the purchase money due, and payable as aforesaid, by all actual settlers on said lands, their heirs or successors, whose habitations were rendered desolate by the Indians in the course of the late war, should be exonerated:

Exonerations of interest in certain cases.

SECT. X. *Be it therefore enacted, and it is hereby enacted by the authority aforesaid,* That all actual settlers residing on the northern and western frontiers of this state, and who have been driven by the Indians from their habitations in the course of the late war, they, or their legal representatives, shall be exonerated and acquitted of the interest accruing upon the purchase money due, and payable as aforesaid, from the first day of January, which was in the year one thousand seven hundred and seventy-six, until the first day of July, in the year one thousand seven hundred and eighty-four, provided they respectively pay or secure the purchase money of the lands by them severally claimed, in the manner and within the time herein before mentioned: *Provided also,* That the persons applying for the benefit of the said exoneration do prove, by the oath of a credible person, taken before a Justice of the peace for the proper county, or before a member of the Supreme Executive Council, that the person, in whose right aforesaid benefit is claimed, was, in the course of the last war, actually driven from his habitation on the said land through force or fear of the Indians, and that the said plantation was consequently left without inhabitants.

Limitation of time for applying for patents.

[SECT. XI. *And be it further enacted by the authority aforesaid,* That if any person or persons so entitled, as aforesaid, to any lands within said Indian purchase in this state, and yet remaining unpattented, shall refuse or neglect to pay or secure the purchase money, or arrearages of purchase money, due to the state, and demand a patent for the same, in the manner herein before directed, on or before the tenth day of April, which will be in the year of our Lord one thousand seven hundred and eighty-seven, every such person and persons, so neglecting or refusing, shall be barred and precluded from the benefit intended by this act, with respect to further time of payment, and shall be forthwith prosecuted and proceeded against,

for the monies due on such lands, by sale of the said lands, according to law, without further delay.] 1785.

Passed 16th September, 1785.—Recorded in Law Book No. III. page 24.

CHAPTER MCLXX.

An ACT to establish a ferry from the south-west side of the Monongahela, opposite to the town of Pittsburgh.

SECT. I. A PUBLIC ferry established from the south-west side of Monongahela river, opposite to the town of Pittsburg, and vested in Jacob Bausman, his heirs and assigns, subject to such rates and regulations as the legislature may in future direct.]

Passed 16th September, 1785 —Recorded in Law Book No. III. page 24.

CHAPTER MCLXXI.

An ACT to re-establish the ancient Corporation of the borough of Bristol, in the county of Bucks.

SECT. I. [LETTERS patent to issue from the Executive Council, to re-establish the ancient corporation; and all the corporate privileges under the old charter vested in the new officers. The qualification of the electors and elected, prescribed.]

Passed 16th September, 1785.—Recorded in Law Book No. III. pa. 23.

CHAPTER MCLXXVI.

An ACT concerning divorces and alimony.

SECT. I. WHEREAS it is the design of marriage, and the wish of parties entering into that state, that it should continue during their joint lives, yet where the one party is under natural or legal incapacities of faithfully discharging the matrimonial vow, or is guilty of acts and deeds inconsistent with the nature thereof, the laws of every well regulated society ought to give relief to the innocent and injured person: Therefore,

SECT. II. *Be it enacted, and it is hereby enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same,* That where a marriage hath been heretofore or shall hereafter be contracted and celebrated between any two persons, and it shall be adjudged, in the manner hereinafter mentioned, that either party at the time of the contract was and still is naturally impotent or incapable of procreation, or that he or she hath, knowingly, entered into a second marriage, in violation of the previous vow he or she made to the former wife or husband, whose marriage is still subsisting, or that either party hath committed adultery, or wilful and ma-

Causes of divorce from the bonds of matrimony.

1785.

licitious desertion and absence, without a reasonable cause, for and during the term and space of four years, in every such case it shall and may be lawful for the innocent and injured person to obtain a divorce, not only from bed and board, but also from the bond of matrimony itself.

Proceedings
to obtain a
divorce.

SECT. III. *And be it further enacted by the authority aforesaid,* That if any person hath been or shall be injured in any of the ways above mentioned, the husband in his own proper person, or the wife, by her next friend, may exhibit his or her petition or libel to the justices of the Supreme Court of this state in term time, or to one or more of the same Justices in the vacation, at least thirty days before the next term, setting forth therein, particularly and specially, the causes of his or her complaint, and shall, together with such petition or libel, also exhibit an affidavit, on oath or affirmation, taken before one of the same Justices, or before some Justice of the court of Common Pleas, or Justice of the Peace within the county, in this state, where he or she resides, that the facts contained in the said petition or libel are true, to the best of his or her knowledge and belief, and that the said complaint is not made out of levity, or by collusion between the said husband and wife, and for the mere purpose of being freed and separated from each other, but in sincerity and truth, for the causes mentioned in the said petition or libel; and thereupon a subpoena may and shall issue from the said court, signed by one of the Justices thereof, directed to the person so complained against, commanding him or her to appear at the next Supreme Court, to answer the said petition or libel; and upon due proof, at the return of the said process, that a copy thereof was served, either personally on the said party, and the original shewn to him or her, under the seal of the court, or that he or she could not be found, and that a copy thereof was left at the place of his or her usual and last abode, at least fifteen days before the day of the said return, inclusive, if he or she shall refuse or neglect to appear, then an alias subpoena shall issue, returnable the first day of the next term, and be served personally in manner aforesaid; but if he or she cannot be found, then proclamation shall be publicly made by the Sheriff of the city and county of Philadelphia, on three several market-days, at the court-house of the said city and county, and by the Sheriff of the proper county on three several days in term time at the court-house, for the party to appear and answer, as commanded by the subpoena, and that notice be also given in some of the public newspapers of said city for four successive weeks, previous to the return day of the said process; and, in the mean time, the said court shall and may make such preparatory rules and orders in the cause, that the same may be brought to issue, or a hearing, at the second term, when the court may determine the same, *ex parte*, if necessary. But if the defendant shall appear and answer, agreeably to the rules of the court, and either of the parties shall desire any matter of fact, that is affirmed by the one, and denied by the other, to be tried by a jury, the same shall be tried accordingly at bar, or at *Nisi Prius*, in the county where the said fact is charged to have arisen; and in case the ground of the petition or libel be for the cause of adultery, committed within this

Subpoena to
issue to the
defendant.

Alias sub-
poena to is-
sue.

Proclama-
tions to be
made;

And notice
published.

Preparatory
proceedings
in the cause.

Controvert-
ed matters
of fact may,
upon re-
quest, be
tried by a
jury.

Proceedings
thereon, if
the fact

state, then, and in such case, an authenticated transcript of the record of the conviction and attainder of the said offence shall be filed, together with the said petition or libel, and shall be admitted as good evidence thereof at the hearing; but if the said offence is charged to have been committed within this state, and that the party fled before conviction, or that it was done beyond seas, or without the limits and jurisdiction of this state, then the same may be put in issue, and tried by a jury at bar, if either party shall desire the same, or if not desired, to be sotried, may be enquired into by the court, in the presence of the parties, or, if either of them will not attend, then *ex parte*, by the examination of witnesses on interrogatories, exhibits, or other legal proof, had either before or at the hearing.

SECT. IV. *And be it further enacted by the authority aforesaid,* That if any husband or wife, upon any false rumour, in appearance well founded, of the death of the other (where such other has been absent for the space of two whole years) hath married, or shall marry again, he or she shall not be liable to the pains of adultery; but it shall be in the election of the party remaining unmarried, at his or her return, to insist to have his or her former wife or husband restored, or to have his or her own marriage dissolved, and the other party to remain with the second husband or wife; and in any suit or action instituted for this purpose, within one year after such return, the court may and shall sentence and decree accordingly.

SECT. V. *And be it further enacted by the authority aforesaid,* That in any action or suit commenced in the said court for a divorce, for the cause of adultery, if the defendant shall allege and prove that the plaintiff has been guilty of the like crime, or has admitted the defendant into conjugal society or embraces, after he or she knew of the criminal fact, or that the said plaintiff (if the husband) allowed of the wife's prostitutions, and received hire for them, or exposed his wife to lewd company, whereby she became ensnared to the crime aforesaid, it shall be a good defence, and a perpetual bar against the same.

SECT. VI. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful for the said Supreme Court, after hearing any cause commenced before them by virtue of this act, to determine the same, as to law and justice shall appertain, by either dismissing the petition or libel, or sentencing and decreeing a divorce and separation from the nuptial ties or bonds of matrimony, or that the marriage is null and void, agreeably to the prayer thereof; and that after such sentence, nullifying or dissolving the marriage, all and every the duties, rights and claims, accruing to either of the said parties, at any time theretofore, in pursuance of the said marriage, shall cease and determine, and the said parties shall severally be at liberty to marry again, in the like manner as if they never had been married.

SECT. VII. *Provided always nevertheless,* That he or she, who hath been guilty of the adultery, may not marry the person with whom the said crime was committed, during the life of the former husband or wife: *Provided also,* That nothing herein contained shall be construed to extend to, or affect, or render illegitimate, any children born of the body of the wife during the coverture.

1785.

charged was committed here; or in case it was committed abroad, &c.
If a trial is not desired, the court may examine into the fact, in the presence of the parties, or *ex parte*,

No adultery, if husband or wife marry again on rumour of the death of the other, who has been absent for two years. The unmarried party may have the wife or husband restored, within one year after return.

Reerimination, &c. a bar to the divorce.

Sentence of the court, how to be pronounced, and the effect thereof.

Adulterer may not marry the person with whom the crime was committed, during the life of the former husband or wife.

1785.

Divorced
adulteress,
living with
her paramour,
incapable of
alienating
her estate.

SECT. VIII. *And be it further enacted by the authority aforesaid,* That where any woman shall be divorced as aforesaid, and shall afterwards openly cohabit at bed and board with the person named in the petition or libel, and proved to be the partaker in her crime, she shall not, and she is hereby declared to be incapable to alienate, directly or indirectly, any of her lands, tenements or hereditaments, but that all deeds, wills, appointments, and conveyances thereof, shall be absolutely void and of none effect, and after her death the same shall descend and be subject to distribution, in like manner as if she had died seized thereof intestate.

None but
citizens entit-
led to a di-
vorce under
this act.

SECT. IX. *Provided always, and it is hereby further enacted by the authority aforesaid,* That no person shall be entitled to a divorce from the bond of matrimony, by virtue of this act, who is not a citizen of this state, and who has not resided therein at least one whole year previous to the filing his or her petition or libel.

Cause of di-
vorce from
bed and
board.

SECT. X. *And be it further enacted by the authority aforesaid,* That if any husband shall, maliciously, either abandon his family or turn his wife out of doors, or by cruel and barbarous treatment endanger her life, or offer such indignities to her person, as to render her condition intolerable, or life burthensome, and thereby force her to withdraw from his house and family, it shall and may be lawful for the Supreme Court, upon complaint and due proof thereof in manner aforesaid, at the first or any subsequent term, to grant the wife a divorce from bed and board; and also to allow her such alimony as her husband's circumstances will admit of, so as the same do not exceed the third part of the annual profits or income of his estate, or of his occupation or labour; or to decree but one of them, as the justice of the case shall require; which shall continue until a reconciliation shall take place, or until the husband shall, by his petition or libel, offer to receive and cohabit with her again, and to use her as a good husband ought to do; and then, and in such case, the court may either suspend the aforesaid sentence or decree, or, in case of her refusal to return and cohabit under the protection of the court, to discharge and annul the same, according to their discretion; and if he fail in performing his said offers and engagements, the former sentence or decree may be revived and enforced, and the arrears of the alimony ordered to be paid.

Alimony,
how to be
allowed, and
how long to
continue.

When the
sentence
may be sus-
pended or an-
nulled;

and revived.

Of costs on
a libel for di-
vorce.

SECT. XI. *And be it further enacted by the authority aforesaid,* That the said court may award costs to the party, in whose behalf the sentence or decree shall pass, or that each party shall pay his or her own costs, as to them shall appear to be reasonable and just.

Appeal al-
lowed to the
High Court
of Errors
and Appeals.

SECT. XII. *And be it further enacted by the authority aforesaid,* That either of the parties in any suit or action to be brought in pursuance of this act, after the final sentence or decree given, may appeal therefrom to the High Court of Errors and Appeals, upon entering into a recognizance before one of the Justices of the Supreme Court, with at least one good surety, in a sum amounting to double the costs incurred in the said Supreme Court, conditioned to prosecute the said appeal with effect; and the said appeal may and shall be prosecuted and conducted in the manner prescribed and directed by an act, entitled "An act for erecting an High Court of Errors and Appeals," with respect to appeals from the Judge of the Ad-

miralty, and the Register of the Probate of Wills, and for granting letters of administration within this state; and their judgment, with all the proceedings, shall be again remitted to the Supreme Court, as in other cases.

1785.

[3. The High Court of Errors and Appeals is abolished.]

Passed 19th September, 1785.—Recorded in Law Book No. III. page 41. (e)

(e) By a supplement to this act, passed 2d of April, 1804, (chap. 2483,) applications for divorces, may be made to the judges of the supreme court, or to the judges of the court of common pleas of the proper county, and the proceedings therein are directed and prescribed.

Steele v. Steele.

This was an issue joined on the facts alleged in a libel for a divorce: and upon the trial, the *chief justice* observed, that notice ought to be given of the facts intended to be proved under the general allegations of the libel.

Rush, J. I think it would be most convenient to give notice, that between two specific dates, acts of cruelty, &c. were intended to be proved.

The Court seemed to adopt that idea, and recommended it for the future practice of the bar. 1 Dallas, 409.

Thompson v. Thompson.

Libel for a divorce *a mensa et thoro*, charging defendant with various acts of cruelty and indignities, that rendered the libellant's situation unsupportable. Defendant, *protestando* &c. pleaded, that before the filing of the said libel, his wife (the libellant) had separated herself from him, and that "he had offered to receive and cohabit with her again, and use her as a good husband ought to do." To this plea the defendant demurred. *Tilghman*, in support of it, contended, that by the act, (§ 10.) The court were obliged either to suspend, or to discharge any sentence, separating husband and wife, from bed and board, whenever the husband should make the offer, that was stated in the answer; and that if this was a good reason to annul a sentence, *a fortiori* it is a sufficient answer to the complaint of this libel. This too, he added was agreeable to the practice of the spiritual court in *England*, *Prec. Chan.* 495. Where, it is said, that alimony continued no longer than the parties became reconciled, and consented to cohabit.

Serjeant, for the libellant, insisted, that the court had a discretion to suspend, or annul, the sentence, as the circumstances, under which the offer should be made, required; or to refuse to do either; and that, at all events, such an offer, as was stated, made before sentence, could not prevent the

jurisdiction of the court, or a separation, where such extreme cruelty was stated to have been used by the husband.

The Court inclined to think, that even after sentence, the mere offer of the husband, would not, in all cases, be a cause for suspending it; and that the act left them a discretion, upon the offer being made, to hear a wife, and to continue the sentence in full force, if the circumstance of the case required it. (3 Ark. 295.) But they were clearly of opinion, that the defendant's answer was insufficient, and thereupon decreed a divorce from bed and board. As to alimony, the defendant not being prepared upon that point, *cur. advis. vult.* 2 Dallas, 129.

Tiffin v. Tiffin.

Plaintiff and defendant were divorced *a mensa et thoro*, at December term, 1802, and in September following, this court, pursuant to an agreement between the parties, decreed that the defendant should pay to the wife \$ 300 a year, in equal monthly payments, transfer to her some personal property, and execute a conveyance to trustees for her use, of an estate in New-Jersey, worth about \$ 12,000, which she had brought him in marriage; the whole to be in full of all claim of alimony and dower, and in case the payment should be delayed three weeks after the time appointed, an attachment might issue to enforce the decree, without the necessity of applying to the court.

The transfers and conveyance were duly made; but, upon the *affidavit* of the wife, on the 12th of January, 1807, that 325 dollars were due for arrears of alimony, an attachment issued; and at March term following, *Rawle* for defendant, obtained a rule to shew cause, why the attachment should not be quashed, upon the ground of a reconciliation, prior to the attachment.

After evidence (which is substantially stated by the court,) and argument. The court decided, as follows.

Tilghman c. j. This motion is grounded on an alleged reconciliation which took place between them in September, 1806. On this point, evidence has been offered, and it is proved beyond doubt, that *Mrs. Tiffin*, at the instance of her husband, did return to his home, and cohabit with him four or five weeks,

1785. during which time she acted as mistress of the family. Their harmony was not without interruption; but it cannot be said, the fault was altogether on one side. *Tiffin* was in desperate circumstances. His goods and household furniture were taken in execution, and his wife left him; and after some time she took out an attachment, asserting that she had been fraudulently persuaded, and tricked into a short reconciliation. Soon after the decree of this court, *Tiffin* conveyed to trustees, for the use of his wife, pursuant to said decree, real and personal property of considerable value, which had belonged to her before their marriage. The alimony decreed by the court was 300 dollars a year, payable monthly, and it appears by the affidavit of the libellant, that 325 dollars were in arrear, when she took out the attachment. The act of assembly is express, that the alimony shall only continue until a reconciliation shall take place. When the wife returns to her husband, she puts herself under his power, and gives up her claim to the arrears of her alimony.

The court are strongly inclined to promote the union, rather than the separation of married people. They are not disposed, therefore, to strain the construction of the act of assembly in favour of a wife, who having been reconciled to her husband, leaves him again without just cause. The causes for divorce from bed and board, are, the husband's maliciously abandoning his family, turning his wife out of doors, or by cruel and barbarous treatment, endangering her life, or offering such indignities to her person, as to render her condition intolerable, or her life burthensome. It is not proved that *Mrs. Tiffin* experienced any treatment of this kind, after the reconciliation took place. When the household goods were taken in execution, she left her husband's house, which, unless she had received ill treatment, she ought not to have done; for she was bound to adhere to her husband, and share his fortune, in poverty or riches. If upon receiving ill treatment, she had brought her case before the court supported by proof, it would then have been considered whether the act of assembly authorizes us to order the arrears of alimony to be paid. As the matter stands, we have no such power. The opinion of the court therefore, is, that the attachment was improperly issued, and must be quashed.

Teates J. I have no hesitation in saying, that in family quarrels, the maltreatment of the wife by the husband, uniformly excites strong feelings in my

mind, and that I view with much satisfaction every measure which tends to allay and compose those unhappy differences.

(Here the judge stated the circumstances as before.)

The reconciliation of husband and wife by our act of 19th September, 1785, vacates an order of alimony; and it is admitted on both sides, that the only question before us consists in the honest reality of that reconciliation. The counsel of the libellant have contended, that this temporary re-union was the effect of a fraudulent design to elude the decree of this court, and therefore not within the true reason of the law.

I know neither of the parties, nor their matrimonial conduct, except from the testimony taken in this cause. The husband has executed a deed to trustees, without reserving a power of revocation, of the property his wife had acquired before their intermarriage, in pursuance of the decree of this court. From the affidavit of the wife, stating, that on the 12th of *January*, 1807, there were 325 dollars due to her, it necessarily follows, that she must have received from him her separate maintenance for two years and three months.

I cannot consider the husband's soliciting his wife to return to his bed and board, as censurable, even if the embarrassed state of his affairs formed a considerable inducement to that measure. Mere pecuniary considerations too frequently form the *sine qua non* of matrimonial engagements, even in early life. They had taken each other for *richer for poorer*. It has not been suggested, that the pressure of *Tiffin's* debts was illusory; but it has been urged that his present agent and bail, was one of the plaintiffs in the executions. I see nothing in that circumstance from which I am warranted to conclude that his views were fraudulent. No one will deny, that it is the duty of a good wife to follow the state of her husband, whether his fortunes are prosperous or adverse, she should not desert him, unless on the strongest grounds. I regard the cohabitation of *Tiffin* and his wife for five weeks, as irrefragable proof of their reconciliation, and do not find myself at liberty to penetrate into the recesses of their chamber. The act was voluntary on her part, and we must presume was done upon due consideration. She thereby disrobed herself of the right to demand this money, and conferred on her husband a right to retain it, unless some instance of maltreatment or plain fraud can be shewn to intitle her thereto. On a mere offer

by the husband to take the wife back, the court would deliberately examine all the circumstances which had led to that offer; but the reality and sincerity of the reconciliation can only be known to the parties themselves, with the different grounds which have influenced their conduct. Had we even the power we have not materials sufficient to ascertain which of them was most liable to blame in their family broils, or to what sources their domestic discontents are to be ascribed. I content myself with observing, that sufficient evidence appears to place the wife in a most unamiable point of view. She has spread her own bed, and there she must be contented to lie, though it may now appear to her a bed of torture. I am of opinion the attachment should be quashed.

Brackenridge, J. concurred. 2 Binney, 202.

On issuing subpoenas in cases of divorce, a rule may be made to take depositions before the return thereof, *anon.* in Sup. court, September, 1794, (MSS. Reports.)

On a libel for divorce from bed and board, the facts, when contested, shall be tried by the court, *per testes Carre v. Carre.* Sup. Court, March term, 1797, (MSS. Reports.)

A marriage had, and the first husband being in full life, a second marriage of the woman is merely void, though her first husband has been absent eight or nine years. *Kinley v. Kinley*, same term, in Sup. Court. (MSS. Reports.)

On a sentence of divorce, the wife's disclaimer of alimony, is not a perpetual bar to future applications.

Where there has been a reconciliation between the parties, after a divorce, a new divorce is necessary to found the wife's claim of alimony. *M'Karracher v. M'Karracher*, Supreme Court, September, 1800. (MSS. Rep.)

It is not indispensably necessary to name the *particeps criminis* in a libel for a divorce, founded on a supposed adultery.

Where such libel states the adultery to be committed, with *E. P.* and other lewd women unknown, the times and places, and attendant circumstances, should be specified in a written notice before trial, without requisition; and if their names should become known, they should also be specified. The party failing herein, should be confined in the evidence, to acts of adultery committed with *E. P. Garrat v. Garrat*, in the supreme court, September, 1805. (MSS. Reports.)

CHAPTER MCLXXVIII.

An ACT to appropriate the sum of two thousand pounds, of the public monies, to the laying out and making of an highway from the western parts of Cumberland county to the town of Pittsburg, and to authorize the President in Council to appoint commissioners to lay out the same.

[COMMISSIONERS to be appointed to lay out a State Highway from Miller's Spring, in Cumberland county, in as direct and straight a manner as the circumstances of the country and the situation of the ground would admit. Proceedings of the commissioners therein directed, report to be made to the Executive Council, who had power to direct reviews; and to judge of and finally determine the course and direction of said Highway. The road to be of the breadth of sixty-feet. "And the said highway when it shall be so established, shall be and remain, to all intents and purposes, the State highway between the western parts of the county of Cumberland, and the town of Pittsburg; and the courses and distances, and other circumstances of the said highway, shall be entered at length in the council book, which entry shall be deemed a record thereof."

The residue of the act provided for the compensation of the commissioners; and the appropriation of the money (\$ 2000,) for improving the road, and the manner in which it should be accounted for.

1785. All the act, except the part between inverted commas above, is obsolete.]

Passed 21st September, 1785.—Recorded in Law Book, No. III. pa. 46. (f)

(f) The road here directed, being surveyed and laid out in part, was confirmed in council, on the 24th of November, 1787; to wit, from the widow Miller's spring, through Shippensburg, as far as the town of Bedford, but a review was ordered of the other part from Bedford to Pittsburgh. By a resolution of the General Assembly, of the 21st of November, 1788, the Executive was authorized to draw for the amount of the expenses to be incurred in making that review; by an order of Council of the 14th of March, 1789, the surveyors were accordingly appointed; and on the 26th day of May, 1790, they presented their report. (Note to former edition.)

CHAPTER MCLXXII.

An ACT for regulating the measurement of corn and salt imported into the port of Philadelphia. (g)

SECT. I. WHEREAS, by an ordinance of the late corporation of the city of Philadelphia, a measurer of corn and salt was appointed, with certain powers and under certain regulations, which have been variously exercised and attended to since the revolution, but without any express provision by law, and it is necessary to establish such an officer, and to prescribe his duties and power :

SECT. II. *Be it therefore enacted, and it is hereby enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same,* That there be appointed, by the Supreme Executive Council of this commonwealth, some proper and discreet person, to be the measurer of all kinds of corn and salt imported or brought into the port and city of Philadelphia for sale ; which officer, before he enters on the duty of the office, shall take and subscribe, before one of the Judges of the court of Common Pleas for the county of Philadelphia, an oath or affirmation, that he will, in all things, well and faithfully execute the office of measurer of corn and salt within the city and port of Philadelphia, according to the best of his knowledge and ability, and the directions contained in this act.

SECT. III. *Be it further enacted by the authority aforesaid,* That the duty of the said officer shall be,

To provide, at his own cost, a sufficient number of barred half bushel measures for corn, and unbarred half bushel measures for salt, made of dry well seasoned white oak, and to have the same compared with and regulated by the public standard half bushel measure kept in the city of Philadelphia, at least twice in every year that the same shall be used :

To employ a sufficient number of able bodied and trusty persons, to act as his deputies, in the measuring and striking all kinds of corn

(g) On the 28th of March, 1788, an act was passed, by which the measurer of corn and salt is also made the measurer of imported coal; and pro-

vision is made for the admeasurement of lime, in disputed cases. (chap. 1330.) (Note to former edition.)

A measurer
of corn and
salt to be ap-
pointed.

His oath of
office.

The duty of
the measur-
er;

to provide
measures;

to employ
deputies;

and salt, which have been imported and brought into the city or port of Philadelphia for sale, which deputies, before they shall take upon themselves to measure any corn or salt, shall take and subscribe, before one of the said Judges, the like oath or affirmation herein before mentioned. 1785.

That the said officer shall, upon notice to him given, in writing, that any ship, shallop or vessel, boat, cart or waggon, hath imported or brought into the city or port any corn or salt, and that the same is sold and ready to be delivered to the purchaser, send one or more of his deputies, within two hours, to measure the same; which deputy or deputies, taking with them a sufficient number of the said half bushel measures, therewith shall well and faithfully measure the same, and forthwith deliver to the seller an account of the number of bushels by him measured and delivered, and a duplicate thereof to the buyer; and shall every day, on which he shall measure any corn or salt, return to the said officer an account of the whole quantity by him measured, with the name of the seller and buyer, and the ship, vessel, boat, cart or waggon, from which the same was delivered.

to measure all corn or salt imported;

proceedings therein;

The officer shall keep a fair book, in which he shall register the date, names of the sellers and buyers, the quantity and species of the corn and salt measured; which book shall be open for the inspection of the sellers and buyers, at any time when they shall have occasion to refer to the same.

and to keep a book, to be open to inspection.

SECT. IV. *And be it further enacted by the authority aforesaid,* That the said officer, for keeping the said measures and registry, and performing the other duties hereby enjoined, shall be entitled to demand, receive and recover, from the buyers of all kinds of corn and salt, after the rate of nine-pence for every one hundred bushels thereof, bought and sold within the city and port of Philadelphia, and no more.

Fees of the measurer;

SECT. V. *And be it further enacted by the authority aforesaid,* That the deputy-measurers aforesaid shall be entitled to demand, receive and recover, of and from the sellers of all kinds of corn, which they or any of them shall measure, by filling and striking the measures, after the rate of one shilling and six-pence for every one hundred bushels, and no more; and for all salt which the sellers shall cause to be filled into the measures, and the said deputies shall strike and keep an account of, after the rate of one shilling for every hundred bushels, and no more.

and of his deputies.

SECT. VI. *And be it further enacted by the authority aforesaid,* That upon complaint made by any two dealers in corn or salt, dwelling in the city of Philadelphia, the township of the Northern-Liberties, or district of Southwark, to the Supreme Executive Council, that the officer hereby directed to be by them appointed shall have misbehaved himself in, or neglected the duty of his office, they shall summon him and the complainants to appear before them, and if he shall neglect or refuse to appear, or upon hearing, the complaint against him shall appear to be well founded, they shall remove him from the office, and appoint another in his place, and so as often as such complaints shall be made against the officer for the time being.

Proceedings to remove delinquent measurer upon complaint;

1785. **SECT. VII.** *And be it further enacted by the authority aforesaid,* That upon a like complaint, to be made to two of the Justices of the court of Common Pleas for the county of Philadelphia, that any of the deputies of the said officer has misbehaved himself, or neglected his duty, the said two justices shall, in like manner, summon the party complained of, and if they see cause deprive him of the office of deputy-measurer, after which he shall not be qualified to measure any grain or salt bought or sold within this city or port.

or his deputies.

Limitation, as to places, of the powers of the measurer.

SECT. VII. *And be it further enacted by the authority aforesaid,* That nothing in this act contained shall extend, or be construed to extend, to any retailers of corn or salt, in or out of any store or the public market places in this city, township or district aforesaid, nor to entitle the said officer to the reward aforesaid, upon any corn or salt which has been once measured in manner aforesaid, and delivered into any store, warehouse or granary, in the said city, township or district.

Passed 22d September, 1785—Recorded in Law Book No. III. page 52.

CHAPTER MCLXXXIV.

An ACT to confirm to the trustees of the University of the state of Pennsylvania, divers estates therein enumerated, for the support of the said seminary; and for enabling the board of trustees of the said University to choose a new trustee, in the stead of any of their number, (not being a trustee in right of office or station,) who shall be absent from the meetings of the said corporation during the space six of months. (h)

SECT. I. WHEREAS, by an act of General Assembly of this commonwealth, entitled “An act to confirm the estates and interests of the college, academy, and charitable school of the city of Philadelphia; and to amend and alter the charters thereof, conformably to the revolution, and to the constitution and government of this commonwealth, and to erect the same into an University,” which was enacted on the twenty-seventh day of November, in the year of our Lord, one thousand seven hundred and seventy-nine, it was, for the better enabling the trustees therein named, and thereby appointed, and their successors, to effectuate the pious and praiseworthy designs of the founders, benefactors and contributors of the said seminary of learning, that it should be lawful for the Supreme Executive Council of this state to reserve such and so many of the

(h) See the various acts respecting this institution, passed on the 27th of November, 1779, by which, *inter alia*, the proprietary charter, granted to the college, academy and charitable school of the city of Philadelphia, was annulled, and the estate, &c. of the college vested in the University of Pennsylvania; the 16th of March, 1780, correcting a misnomer in the preceding act; the 6th of March, 1789, repealing so

much of the act of the 27th of November, 1779, as affects the corporate character, or divests the estate of the college, and restoring the same to the former trustees thereof; and the 30th of September, 1791, uniting the University and the college, under the name of the University of Pennsylvania. [Vol. 1, page 474, 502.] (Note to former edition.)

confiscated estates which were then unsold and unappropriated, as to them should seem necessary, in order to create a certain fund for the maintenance of the Provost, Vice-Provost, Masters and Assistants of the same University, and to uphold and preserve the charitable school thereof: *Provided*, that the yearly income of such estates, so reserved and appropriated to the use of the said University, should not exceed the yearly sum of fifteen hundred pounds, computing wheat at the rate of ten shillings per bushel: *And provided also*, That such reservations be, from time to time, laid before the General Assembly of this state, for their approbation and confirmation:

SECT. II. And whereas, since the passing of the same act, the confiscated real estates hereinafter mentioned and described have been severally reserved and appropriated by the Supreme Executive Council, in pursuance thereof, for the purposes aforesaid, and the same estates have been delivered to the said trustees accordingly; that is to say,

A rent charge of thirty bushels of wheat, payable annually to the said trustees, out of a certain tract of land, situate in the Northern-Liberties township, in the county of Philadelphia, bounded by Germantown road, by land of Henry Nagle, and of

, and by Turner's Lane, containing fifty-eight acres and thirty-five perches, granted by the commonwealth, in fee, to John Dunlap, Thomas Lawrence and James Budden, by deed, dated the fourth day of August, one thousand seven hundred and eighty; late the estate of Joseph Griswold.

A rent charge of twelve bushels and eleven twentieth parts of a bushel, (the same into twenty parts to be divided,) payable annually to the said trustees, out of a certain tract of land, situate in the Manor of Moreland, then in the county of Philadelphia, bounded by lands of John Butcher, Jonathan Comley, Joseph Mitchel and Casper Fetter, containing one hundred acres, be the same more or less, granted by the commonwealth, in fee, to Charles Walker, by deed, dated the thirty-first day of July, one thousand seven hundred and eighty; late the estate of Joseph Cromley.

A rent charge of twenty bushels of wheat, to be annually paid to the said trustees, out of a certain messuage or tenement and lot of ground, situate on the north-east corner of Second-street, from Delaware, and Sassafras-street, in the city of Philadelphia, containing in breadth north and south nineteen feet, and in depth one hundred feet, bounded southward by Sassafras-street, eastward by a four feet wide alley, which divides this lot from another lot late of John Parrock, (now granted to Peter Parris,) northward by another messuage and lot, late of the said John Parrock, (now belonging to the trustees of the University of Pennsylvania,) and westward by Second-street aforesaid, together with the use and privilege of the said Alley, granted by the commonwealth, in fee, to Christian Wertz, John Schaffer and Jacob Geiger, by deed, dated the nineteenth day of August, one thousand seven hundred and eighty; late the estate of John Parrock.

A rent charge of twenty-two bushels of wheat, payable annually to the said trustees, out of a certain three story brick messuage,

1785. } bake-house, stable and lot of ground, situate on the west side of Front-street, on Delaware, between Sassafra^s and Mulberry-streets, in the city of Philadelphia, containing in breadth nineteen feet, and in depth one hundred and sixty-two feet and nine inches, bounded southward by ground of Edward Brooks, westward by the back ends of Second-street lots, northward by a messuage and lot of Jonathan Richards, and eastward by Front-street, granted by the commonwealth, in fee, to Francis Lee, by deed, dated the twenty-fifth day of November, one thousand seven hundred and eighty; late the estate of George Knapper.

A rent charge of one hundred and thirty-five bushels and four fifth parts of a bushel, (the same to be divided into five parts,) of wheat, to be annually paid to the said trustees, out of two tracts of land, and the messuages and tenements thereon erected, situate in Lower Merion township, then in the county of Philadelphia; one of them containing three hundred acres, bounded by lands of Margaret Jones, William Lewis, Owen Jones, Benjamin Humphreys, Conrad Schitz, John Robinson, John Righter, and the said Margaret Jones; and the other of them containing seventy-eight acres, be the same more or less, bounded by lands of Owen Jones, William Lewis, and the before mentioned tract; granted by the commonwealth, in fee, to Edward Milner, by deed, dated the sixteenth day of December, one thousand seven hundred and eighty; late the estate of John Roberts.

A rent charge of two bushels and nine twentieth parts of a bushel, (the same into twenty parts to be divided,) of wheat, to be paid annually to the said trustees, out of a lot of land of four acres and forty-eight perches of land, bounded on the south side thereof by Poplar Lane, and by land of John Peters and others, and by Third-street continued, situate in the Northern-Liberties of the city of Philadelphia, granted by the commonwealth to William Coats, esquire, in fee, by deed, dated the thirty-first day of January, one thousand seven hundred and eighty-one; late the estate of Samuel Shoemaker.

A rent charge of thirteen bushels and the half of a bushel of wheat, to be paid annually to the said trustees, out of a tract of land, situate in the Northern-Liberties aforesaid, containing about thirty acres, bounded by land of Henry Ciss, and lands late of Isaac Norris and Thomas Bond, granted by the commonwealth to James Budden, John Dunlap and Thomas Lawrence, in fee, by deed, dated the ; late the estate of Joseph Griswold.

A rent charge of seven bushels and the half of a bushel of wheat, payable annually to the said trustees, out of one moiety or undivided equal half part of a tract of land, situate in Blockley township, in Philadelphia county, containing about forty-seven acres and the half of an acre, bounded by land now or late of Daniel Hibbard and Thomas Paschall, on a small run of water, being a branch of Cobbs creek, granted by the commonwealth, in fee, to James Budden, John Dunlap and Thomas Lawrence, by deed, dated the fourth day of February, one thousand seven hundred and eighty-one; late the estate of Joel Evans.

A rent charge of twenty-four bushels and the half of a bushel of wheat, to be paid annually to the said trustees, out of an house and lot, of the breadth of twenty feet, situate in the said city, on the east side of Second-street from Delaware, between Walnut-street and Spruce-street, extending from Second-street to Dock-street, bounded on the south by ground late of Selwood Griffin, which house and lot were granted by the commonwealth, in fee, to Joseph Deane, by deed, dated the thirty-first day of January, one thousand seven hundred and eighty-one; late the estate of John Henderson.

A rent charge of ten bushels and one fifth part of a bushel, (the same being divided into five parts,) of wheat, to be annually paid to the said trustees, out of a tract of land, situate in the Manor of Moreland, then in the county of Philadelphia, containing one hundred and twenty-six acres and one hundred and fifty-four perches, bounded by lands of Richard Maple, Derrick Krewson, William Tillier and William Roberts, granted by the commonwealth, in fee, to George Benner, by deed, dated the fourth day of February, one thousand seven hundred and eighty-one; late the estate of John Loughborough.

A rent charge of five bushels and seven tenths of a bushel, (the same into ten parts to be divided,) of wheat, to be annually paid to the said trustees, out of a tract of land, situate in Hatfield township, then in the county of Philadelphia, containing one hundred and one acres, bounded by land of Buchamer, Martin Wireman, Thomas Davis, Abijah Wright and Thomas Stiltford, granted by the commonwealth, in fee, to Joseph Deane, by deed, dated the thirty-first day of January, one thousand seven hundred and eighty-one; late the estate of Jonathan Wright.

A rent charge of seven bushels and four tenths of a bushel, (the same into ten parts to be divided,) of wheat, to be annually paid to the said trustees, out of a tract of land, situate in the township of Blockley, in Philadelphia county, containing fifty-six acres, bounded by land late of widow Peters, George, and John Penn, esquire, granted by the commonwealth, in fee, to Joseph Deane, by deed, dated the thirty-first day of January, one thousand seven hundred and eighty-one; late the estate of John Butcher.

A rent charge of five bushels and eleven twentieths of a bushel, (the same into twenty parts to be divided,) of wheat, to be annually paid to the said trustees, out of one acre and forty perches of land, and an house thereon, situate in Germantown, in the county of Philadelphia, bounded on the north-east by the main road, by land of Peter Bochiuss and Melchoir Meng, granted by the commonwealth to Joseph Deane, in fee, by deed, dated the thirty-first day of January, one thousand seven hundred and eighty-one; late the estate of Holton Jones.

A rent charge of eight bushels and three fortieths of a bushel, (the same into forty parts to be divided,) of wheat, to be paid annually to the said trustees, out of a tenement and lot of ground, of the breadth of fourteen feet and ten inches, and of the length of fifty-one feet, situate on the south side of Sassafras-street, between

1785. **Front and Second-streets, from the river Delaware, in the city of Philadelphia, granted by the commonwealth, in fee, to Jonas Phillips, by deed, dated the fifteenth day of March, one thousand seven hundred and eighty-one; late the estate of John Parrock.**

A rent charge of fifty-four bushels of wheat, to be annually paid to the said trustees, out of two lots of ground, situate on Frankfort creek, in Oxford township, in the county of Philadelphia; one of them containing sixty-eight acres, bounded by Frankfort creek, land of Robert Harper and of William Ashbridge; and the other containing two hundred and two acres, bounded by Frankfort creek, by land of _____, and land of Thomas Pearl, granted by the commonwealth, in fee, to John Eve, by deed, dated the twenty-first day of March, one thousand seven hundred and eighty-one; late the estate of Oswell Eve.

A rent charge of two bushels and eleven twentieth parts of a bushel, (the same into twenty parts to be divided,) of wheat, to be annually paid to the said trustees, out of a tract of land, situate in the township of Hatfield, then in the county of Philadelphia, bounded by lands late of Melchior Yeder, Thomas Stiltford, Abijah Wright and John Yegless, containing fifty acres, granted by the commonwealth to Owen Faries, in fee, by deed, dated the twenty-first day of March, one thousand seven hundred and eighty-one: late the estate of John Wright.

A rent charge of three bushels and one twentieth part of a bushel, (the same into twenty parts to be divided,) of wheat, payable annually to the said trustees, out of a tract of land, situate in the Manor of Moreland, then in the county of Philadelphia, bounded by land late of Albertson Walton, John Blackford, Detrick Krewson and William Tyllier, containing thirty-three acres and the half of an acre, granted by the commonwealth, in fee, to James Vansant, by deed, dated the twenty-first day of March, one thousand seven hundred and eighty-one; late the estate of John Burke.

A rent charge of ten bushels of wheat, payable annually to the said trustees, out of an house and lot, situate on the west side of Front-street from the Delaware, between Mulberry-street and Sasfras-street, in the city of Philadelphia, bounded northward by a lot late of Edward Stiles, southward by a lot of William Rush, containing sixteen feet in front, and extending westward two hundred and fifteen feet, granted by the commonwealth to Robert Bethell, in fee, by deed, dated the twentieth day of December, one thousand seven hundred and eighty; late the estate of Abraham Carisle.

A rent charge of three bushels of wheat, to be annually paid to the said trustees, out of a tract of land and an house upon the same, in the township of Roxborough, in the county of Philadelphia, bounded by land of Samuel Powell, Daniel Clymer, Christian Van-lashets, and the Schuylkill, containing eleven acres and one hundred and fifty-six perches; granted by the commonwealth to Benjamin Harbeson, in fee, by deed, dated the fourth day of February, one thousand seven hundred and eighty-one; late the estate of Christopher Sour.

A rent charge of two bushels and one twentieth part of a bushel, (the same into twenty parts to be divided,) of wheat, payable annually to the said trustees, out of a lot of ground and house thereon, situate on the south side of Catharine-street, between Front-street and Second-street from Delaware, in the district of Southwark, in the county of Philadelphia, containing in breadth twenty feet, and in length one hundred and one feet and six inches, bounded on the east by a lot of Alexander Adams, on the south by a lot of John Smith, and on the west by a lot of Anthony Duche; granted by the commonwealth, in fee, to Charles Alexander, by deed, dated the twenty-eighth day of February, one thousand seven hundred and eighty-one; late the estate of William Rhodden. 1785.

A rent charge of fifty-five bushels and the half of a bushel of wheat, to be annually paid to the said trustees, out of a lot of ground, on the eastern side of Water-street, and the south side of Sassafras-street, in the city of Philadelphia, the same being twenty feet front on Water-street, and extending into the river Delaware, bounded southward by land late of John Parrock, now of Jacob Bunner; granted by the commonwealth, in fee, to James Parr, by deed, dated the seventh day of June, one thousand seven hundred and eighty-one; late the estate of John Parrock.

A rent charge of sixteen bushels and eight tenths of a bushel, (the same into ten parts to be divided,) of wheat, payable annually to the said trustees, out of a lot of ground and house thereon, situate on the east side of Water-street, between Sassafras-street and Mulberry-street, in the city of Philadelphia, bounded on the north by a lot of Jacob Bunner, on the south by a lot of Joseph Warner, containing in breadth twenty-five feet and six inches, and in depth to the Delaware as far as low water mark; granted by the commonwealth, in fee, to Michael Simpson, by deed, dated the fourteenth day of June, one thousand seven hundred and eighty-one; late the estate of John Parrock.

A rent charge of twenty-two bushels and eight tenths of a bushel (the same into ten parts to be divided) of wheat, to be annually paid to the said trustees, out of a lot of ground, situate on the east side of Second-street continued, being twenty feet in breadth, and sixty-five feet in depth, in the district of Southwark, in the county of Philadelphia, bounded northward by ground of James Skinner, and southward by ground of James Rowan; granted by the commonwealth, in fee, to Alexander Powers, by deed, dated the thirtieth day of June, one thousand seven hundred and eighty-one; late the estate of John Fox.

A rent charge of six bushels of wheat, to be annually paid to the said trustees, out of a lot of ground and house thereon, situate on the west side of Fourth-street from Delaware, between High-street and Chesnut-street, in the city of Philadelphia, bounded on the south by a lot of Isaiah Bell, northward by a lot late of John Gibson, containing in breadth fifteen feet, and in depth forty-nine feet and six inches; granted by the commonwealth, in fee, to Benjamin Harbeson, by deed, dated the third day of February, one thousand seven hundred and eighty-one; late the estate of Isaac Allen.

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A rent charge of thirty-nine bushels and three twentieth parts of a bushel (the same into twenty parts to be divided) of wheat, to be annually paid to the said trustees, out of a lot of ground, wharf and tenements, situate in the city of Philadelphia, on the east side of Water-street, and north side of Sassafras street, the same being twenty feet in front, and extending into the river Delaware; granted by the commonwealth, in fee, to John Weidman, by deed, dated the tenth day of July, one thousand seven hundred and eighty-one: late the estate of John Parrock.

A rent charge of eleven bushels and nine tenths of a bushel (the same into ten parts to be divided) of wheat, to be annually paid to the said trustees, out of a tract of land, situate in the township of Heidelberg, in Berks county, bounded by land of Adam Wegerly, Jacob Staley and George Loush, containing twenty-six acres and six perches; granted by the commonwealth, in fee, to John Plein, by deed, dated the twenty-first day of July, one thousand seven hundred and eighty-one; late the estate of Andrew Allen.

A rent charge of eighteen bushels and the half of a bushel of wheat, to be annually paid to the said trustees, out of two tracts of land, situated in the township of Abington, then in the county of Philadelphia, the former bounded by lands of Thomas Tyson and others, containing one hundred acres; the other containing twenty-four acres, bounded by lands of William Haskins and others; both granted by the commonwealth, to Henry Dotts, in right of Philip Moore, in fee, by deed, dated the twenty-seventh day of June last; late the estate of Joshua Knight.

A rent charge of six bushels and six tenths of a bushel (the same into ten parts to be divided) of wheat, payable to the said trustees, annually, out of a tract of land, situate in the city of Philadelphia, on the north side of Sassafras-street, between Front-street and Second-street from the Delaware, containing in breadth twenty-five feet, and in depth fifty-one feet, bounded westward by a four feet alley, dividing it from other ground late of John Parrock, since granted to Christian Wirtz, and others; the said lot granted by the commonwealth to Peter Paris, in fee, by deed, dated the twelfth day of May, one thousand seven hundred and eighty-; late the estate of John Parrock.

A rent charge of twelve bushels and two tenths of a bushel (the same into ten parts to be divided) of wheat, to be paid annually to the said trustees, out of a tract of land, adjoining the river Schuylkill, and to lands late of Samuel Shoemaker, and to a bye-road, situate in the Northern Liberties of the city of Philadelphia, containing forty-four acres and one hundred and twenty-two perches: granted by the commonwealth, in fee, to James Hutchinson, by deed of the twenty-third day of July, one thousand seven hundred and eighty-one; late the estate of Joseph Galloway.

A rent charge of thirty-two bushels and seven tenths of a bushel (the same into ten parts to be divided) of wheat, to be annually paid to the said trustees, out of a lot, situate in the city of Philadelphia, between Sassafras-street and Mulberry-street, the same being twenty-six feet and six inches in front on the east side of Water-street,

and extending into the river Delaware; granted by the commonwealth, in fee, to Jacob Bunner, by deed of the first of August, one thousand seven hundred and eighty-one; late the estate of John Parrock.

A rent charge of two hundred and thirty-two bushels and one half of a bushel of wheat, to be annually paid to the said trustees, out of four lots of ground, situate in the city of Philadelphia, on Pine-street, Third-Street from the Delaware, and Union-street; granted by the commonwealth, in fee, to the honourable Thomas McKean, esquire, by deed, dated the ninth day of August, one thousand seven hundred and eighty-one; late the estate of Jacob Duché, the younger.

A rent charge of eighty-two bushels and nineteen twentieths of a bushel (the same into twenty parts to be divided) of wheat, to be annually paid to the said trustees, out of an house and lot, situate in the city of Philadelphia, on the north side of Dock-street, between Third-street and Walnut-street, and extending northwards sixty-four feet, by the western side of a public alley, and seventeen feet in breadth on Dock-street; granted by the commonwealth, in fee, to William Powers, by deed, dated the fifteenth day of August, one thousand seven hundred and eighty-one; late the estate of David Jones.

A rent charge of three bushels of wheat, to be paid annually to the said trustees, out of about three acres of banked meadow on Hollander's creek, in the township of Moyamensing, in the county of Philadelphia, bounded by land of Plunket Fleeson and John Hall, and by Hollander's creek; granted by the commonwealth, in fee, to Joseph Carson, by deed of the first day of September, one thousand seven hundred and eighty-one; late the estate of Peter Campbell.

A rent charge of nine bushels of wheat, to be paid annually to the said trustees, out of a tract of land, situate in New-Garden township, Chester county, bounded by land of Mr. Scarlet, Isaac Richards, and Knight, containing sixty-four acres; granted by the commonwealth, in fee, to James Parr, by deed, dated the thirty-first day of August, one thousand seven hundred and eighty-one; late the estate of Stephen Anderson.

A rent charge of two bushels and two fifteenths of a bushel (the same into fifteen parts to be divided) of wheat, payable to the said trustees, out of a tract of land, situate in East-Marlborough township, in Chester county, containing three acres and twenty-six perches, bounded by lands of John Jackson, senior, and of William Bailey, and by Doe-run road; granted by the commonwealth to James Parr, in fee, by deed, dated the thirty-first day of August, one thousand seven hundred and eighty-one; late the estate of John Jackson.

A rent charge of two bushels and one hundred and three two hundred and fortieth parts of a bushel (the same to be divided into two hundred and forty parts) of wheat, to be paid annually to the said trustees, out of a tract of land, situate in East-Marlborough township, in Chester county, bounded by land of Jonathan Jackson, Samuel Hayes and George Jackson, containing about twenty-five

1785. acres and fifty-seven perches, granted by the commonwealth, in fee, to James Parr, by deed, dated the thirty-first day of August, one thousand seven hundred and eighty-one; late the estate of Stephen Anderson.

A rent charge of thirteen bushels and fifteen fortieths of a bushel (the same into forty parts to be divided) of wheat, to be paid annually to the said trustees, out of a tract of land, situate in East-Calm township, in Chester county, containing seventy-eight acres and one hundred and twenty-one perches, bounded by lands of John Pierce, Joseph Parke, Thomas Bable and William Dawson; granted by the commonwealth to James Hutchinson, in fee, by deed of the thirty-first day of August, one thousand seven hundred and eighty-one; late the estate of George Sinclair.

A rent charge of nineteen bushels and one half of a bushel of wheat, to be paid annually to the said trustees, out of a tract of land, in West-Bradford township, in Chester county, bounded by lands of William Buffington, Samuel Worth, widow Peoples, William McGlaughlin, and others, containing about four hundred and two acres; granted by the commonwealth to James Hutchinson, in fee, by deed, dated the thirty-first day of August, one thousand seven hundred and eighty-one; late the estate of Philip Marchinton.

A rent charge of one hundred and sixty-three bushels and nineteen one hundred and twenty parts of a bushel (the same into one hundred and twenty parts to be divided) of wheat, to be paid annually to the said trustees, out of a tract of land, in Heidelberg township, in Berks county, containing four hundred and seventy-two acres and one hundred and forty-eight perches, bounded by land of Haines, Matthias Wenrick, Baltzer Wenrick, and others; granted by the commonwealth to John Christie, in fee, by deed, dated the first day of September, one thousand seven hundred and eighty-one; late the estate of Andrew Allen.

A rent charge of one hundred and seventeen bushels and seventy-nine two hundred and forty parts of a bushel (the same into two hundred and forty parts to be divided) of wheat, to be paid annually to the said trustees, out of a tract of land, situate in Heidelberg township, in Berks county, containing three hundred and thirty-one acres and seventy perches, bounded by land late of Andrew Allen, John Haines, Isaac Copeland and Adam Showers; granted by the commonwealth to John Craig, in fee, by deed, dated the first day of September, one thousand seven hundred and eighty-one; late the estate of Andrew Allen.

A rent charge of eighteen bushels of wheat, to be annually paid to the said trustees, out of a tract of land in West-Calm township, in Chester county, containing two hundred and eighty-seven acres and three-fourths of an acre, bounded by land of Thomas Rogers, Samuel Love, William Dunn and Francis Fincher; granted by the commonwealth to Francis Johnson, in fee, by deed, dated on the thirty-first day of August, one thousand seven hundred and eighty-one; late the estate of Richard Swanwick.

A rent charge of two bushels and one quarter of a bushel of wheat, to be annually paid to the said trustees, out of a tract of land, situate in West-Bradford township, in Chester county, containing

seventy-nine acres, bounded by land of **James Chalfant**, **Eastburn**, and of **Thomas Buffington**; granted by the commonwealth to **James Parr**, in fee, by deed, dated the sixth day of **October**, one thousand seven hundred and eighty-one; late the estate of **Philip Marchinton**.

A rent charge of four bushels and the half of a bushel of wheat, to be annually paid to the said trustees, out of a lot of ground, situate in the city of **Philadelphia**, on the north side of **Pine-street**, between **Third** and **Fourth-streets** from the **Delaware**, being twenty feet on **Pine-street**, and one hundred and sixty-feet deep through to **Union-street**; granted by the commonwealth to **Benjamin Evans**, in fee, by deed, dated the twenty-sixth day of **October**, one thousand seven hundred and eighty-one; late the estate of **William Evans**.

A rent charge of one bushel and seven tenths of a bushel (the same into ten parts to be divided) of wheat to be annually paid to the said trustees, out of a lot of ground, situate on the north side of **Catharine-street**, bounded by land of **Edward Stiles** and **Andrew Duche**, in the district of **Southwark**, in the county of **Philadelphia**; granted by the commonwealth to **Patrick Robinson**, in fee, by deed, dated the fifteenth day of **December**, one thousand seven hundred and eighty-one; late the estate of **John Tolly**.

A rent charge of forty-five bushels and nine twentieths of a bushel (the same into twenty parts to be divided) of wheat, to be annually paid to the said trustees, out of a lot of ground, situate in the city of **Philadelphia**, on the east side of **Water-street**, between **Sassafras-street** and **Vine-street**, the same being twenty feet in front on **Water-street**, and extending to the river **Delaware**, adjoining land of **John Weidman** to the south; granted by the commonwealth to **David Zeigler**, in fee, by deed of the tenth day of **January**, one thousand seven hundred and eighty-two; late the estate of **John Parrock**.

A rent charge of one bushel and one fifth of a bushel (the same into five parts to be divided) of wheat, to be annually paid to the said trustees, out of a lot of ground, situate in the town of **Lebanon**, then in the county of **Lancaster**, on **Market-street** four perches, and along **Cumberland-street** eleven perches, and adjoining a lot late of **Philip Marsteller**; granted by the commonwealth to **William Bailey**, in fee, by deed, dated the nineteenth day of **February**, one thousand seven hundred and eighty-two; late the estate of **Nicholas Housecker**.

A rent charge of nine bushels and four-fifths of a bushel (the same into five parts to be divided) of wheat, payable annually to the said trustees, out of a tract of land, situate in **Hilltown township**, **Bucks county**, containing fifty acres, bounded by lands of **Henry Rice**, **Amos Vastine**, **William Thomas**, **Charles Leidig** and **Levy Thomas**; granted by the commonwealth, in fee, to **George Benner**, by deed, dated the twenty-third day of **February**, one thousand seven hundred and eighty-two; late the estate of **Evan Thomas**.

A rent charge of thirty-six bushels of wheat, payable annually to the said trustees, out of a tract of land, situate in **Tinicum township**, in **Bucks county**, containing two hundred and thirty-five acres

1785. and thirty-five perches, bounded by lands late of **John Patterson**, **Edward Pennington**, **William Shoemaker**, **Michael Walter** and **John Reed**; granted by the commonwealth, in fee, to **Jacob Benner**, by deed, dated the twenty-third day of February, one thousand seven hundred and eighty-two; late the estate of **John Overholtz**.

A rent charge of five bushels and eight tenths of a bushel (the same to be divided into ten parts) of wheat, to be annually paid to the said trustees, out of a lot in Abington township, then in the county of Philadelphia, containing ten acres and the quarter of an acre, bounded by **Abraham Tyson's** land, and the **Old York road**; granted by the commonwealth, in fee, to **William Deane**, by deed, dated the thirtieth day of October, one thousand seven hundred and eighty-one; late the estate of **Joshua Knight**.

A rent charge of eighty-seven bushels and a half of wheat, to be annually paid to the said trustees, out of one hundred and five acres of banked meadow, being part of **Hog-Island**, in the river Delaware; granted by the commonwealth, in fee, to **Samuel Caldwell**, by deed of the ninth day of May, one thousand seven hundred and eighty-two; late the estate of **Joseph Galloway**.

A rent charge of twenty-three bushels and four thirtieths of a bushel (the same into thirty parts to be divided) of wheat, to be annually paid to the said trustees, out of a tract of land, situate in **Heidelberg township**, in **Berks county**, containing thirty-two acres and one hundred and twenty-six perches of land; granted by the commonwealth, in fee, to **Jacob Stehely**, by deed of the fifteenth day of June, one thousand seven hundred and eighty-two (marked in the general plan of the **Big Spring tract** of land, number two; late the estate of **Andrew Allen**.

A rent charge of five bushels and nineteen twentieths of a bushel (the same into twenty parts to be divided) of wheat, to be annually paid to the said trustees, out of a tract of land, situate in the **Northern-Liberties township**, in the county of Philadelphia, bounded by the **Old York road** and **Hickory-lane**, containing three acres and sixty-six perches; granted by the commonwealth, in fee, to **James Caldwell**, by deed, of the fifteenth day of June, one thousand seven hundred and eighty-two; late the estate of **John Parrock**.

A rent charge of twenty-one bushels and nine twentieths of a bushel (the same to be divided into twenty parts) of wheat, to be annually paid to the said trustees, out of a tract of land, situate in **Whitpain township**, then in the county of Philadelphia, containing seventy-five acres; granted by the commonwealth, in fee, to **Edmund Milne**, by deed of the fifteenth day of June, one thousand seven hundred and eighty-two; late the estate of **John Robinson**.

A rent charge of twenty bushels and seventy-six one hundred and twentieths of a bushel (the same to be divided into one hundred and twenty parts) of wheat, to be annually paid to the said trustees, out of a tract of land, situate in **Heidelberg township**, in the county of **Berks** (marked number three in the plan of the **Big Spring tract** of land) containing thirty-two acres; granted by the commonwealth to **Peter Filbert**, in fee, by deed, dated the fifteenth day of August, one thousand seven hundred and eighty-two; late the estate of **Andrew Allen**.

A rent charge of seventeen bushels and one fifth of a bushel (the same to be divided into five parts) of wheat, payable annually to the said trustees, out of a tract of land, situate in Heidelberg township, Berks county, containing twenty-seven acres and ninety-two perches (marked number four in the general plan of the Big Spring tract of land;) granted by the commonwealth, in fee, to Peter Nagle, by deed, dated the fifteenth day of August, one thousand seven hundred and eighty-two; late the estate of Andrew Allen.

A rent charge of eleven bushels and eleven twelfths of a bushel (the same into twelve parts to be divided) of wheat, payable to the said trustees annually, out of a tract of land, situate in Brunswick township, in the county of Berks, containing one hundred eighty and four acres, and one hundred twenty and eight perches, with allowance for highways, bounded by land of Jacob Hoffman, Matthias Krämer, Jacob Kengeth, and vacant land; granted by the commonwealth to Charles Goblin, in fee, by deed, dated the twenty-fifth day of July, one thousand seven hundred and eighty-two; late the estate of John Koster.

The lot of ground, messuage, and ferry wharf, situate in the city of Philadelphia, at the east end of Mulberry-street, extending in depth from north to south forty-two feet, and by the north side of Mulberry street, from west to east, ninety-eight feet, into the river Delaware; late the estate of William Austin.

The lot of ground and messuage on the south side of Sassafras street, between Third and Fourth-streets from Delaware, in the city of Philadelphia, being thirty-six feet in front, and one hundred and forty feet deep; and adjoining to lots late of Rudolph Bunner, John Ellick, and others, subject to a rent charge of four pounds eighteen shillings and six-pence, sterling, *per annum*; late the estate of Jonathan Adams and wife.

The lot of ground, house and other buildings, and the wharf thereon, situate in the city of Philadelphia, on the east side of Water-street, between High-street and Mulberry-street, extending into the river Delaware, being about twenty-one feet in breadth on Water-street, subject to a rent charge of nine pounds and ten shillings *per annum*; late the estate of Matthias Aspden.

A tract of land, situate in Middletown township, in Bucks county, bounded by lands late of William Paxton, Joshua Richardson, Garret Vansant and Joseph Knight, and on the north by an highway leading towards Trenton, containing one hundred and twenty-five acres and three fourths of an acre, and thirteen perches; late the estate of Joseph Paxton.

SECT. II. And whereas the said trustees at the sales of confiscated estates, holden by the agents of the Supreme Executive Council of this state, have, with the privity and concurrence of the Supreme Executive Council, by their agents, bid for and purchased divers other confiscated real estates, hereinafter enumerated and described, which, nevertheless, have not been formally reserved and appropriated by acts of the Supreme Executive Council for the purposes aforesaid; that is to say,

A two story brick messuage and lot of ground, situate in the city of Philadelphia, on the south side of Sassafras-street, between Front

1785. and Second-streets from the Delaware, the same being twenty-four feet in front on Sassafras-street, and fifty-one feet in depth, with the privilege of a three feet alley, and also of a four feet alley; late the estate of John Parrock.

A lot of ground and a brick messuage, situate in the city of Philadelphia, being in front on the east side of Second-street sixteen feet, and in depth one hundred feet, with the privilege of a three feet alley from the rear thereof to Sassafras-street; late the estate of John Parrock.

A lot of ground and a two story brick messuage, situate in the city of Philadelphia, on the south side of Sassafras-street, between Front-street on Delaware, and Water-street, being in front in Front-street and Water-street thirty-five feet and an half; and in breadth on Sassafras-street forty-five feet and an half; late the estate of John Parrock.

A lot of ground and a brick messuage, situate in the city of Philadelphia, on the west side of Fourth-street from the Delaware, between Vine-street and Sassafras-street, the same being in breadth on Fourth-street sixteen feet, and in depth westward, to the middle of Crown-street, two hundred feet, with the privilege of a three feet alley; late the estate of Hudson Burr.

A lot of ground and brick messuage, situate in the city of Philadelphia, on the north side of Walnut-street, between Front-street and Second-street from the Delaware, the same being in breadth twenty feet, and in depth fifty-one feet and nine inches, subject to a rent charge of two pounds *per annum*; late the estate of Robert Loosley.

A lot of ground, smith's shop, and other buildings, situate in the city of Philadelphia, on the west side of Third-street, and the south side of Union-street, the same being in breadth on Third-street twenty-four feet, and in depth on Union-street, forty feet, subject to the rent charge of eight pounds twelve shillings and six-pence *per annum*; late the estate of Alexander Smith.

A lot of ground and messuage, situate in the city of Philadelphia, on the south side of Stamper's alley, between Second and Third-streets from the Delaware, the same being in breadth on the said alley twenty-two feet and one half of a foot; and in depth southward, forty-three feet and one half of a foot; late the estate of Joel Evans.

A lot of ground, situate in the city of Philadelphia, and on the east side of Fifth-street, and on the north side of Walnut-street, from the Delaware, late in the tenure of William Weston and others, bounded on the east by land of John Coxe, and on the north by land late of Charles Norris; the same being in breadth on Walnut-street fifty-one feet, and in depth along Fifth-street two hundred and fifty feet; late the estate of Andrew Allen.

A lot of ground and messuage, situate in the city of Philadelphia, on the north side of Walnut-street, between Front and Second-streets from the Delaware, the same being in breadth on Walnut-street sixteen feet, including an alley of three feet wide on the west side thereof, and in depth fifty feet and six inches, subject to a rent charge of thirty shillings *per annum*; late the estate of William Ross.

Three quarter parts of a lot of ground and messuage, situate in the city of Philadelphia, on the west side of Front-street on Delaware, between High-street and Mulberry-street, late in the tenure of John Jackson, deceased; the same being in breadth on Front-street twenty-five feet, and in depth one hundred feet, bounded southward by land late of Thomas Montgomery, northward by land late of Joseph Fox: the one half part thereof in fee simple, and the other quarter for and during the life of Andrew Elliot; the whole lot being subject to a rent charge of four pounds *per annum*, and the said three quarter parts late the estate of Andrew Elliot.

A lot of ground and brick messuage, situate in the Northern-Liberties of the city of Philadelphia, on the east side of Second-street continued, opposite the middle-house, so called, of the late military barracks, the same lot being in breadth twenty feet, and in depth one hundred and twenty-five feet; late the estate of Lawrence Fagan.

A lot of land, situate in the Northern-Liberties of the city of Philadelphia, on the north side of Poplar lane, containing six acres and six perches; bounded by land late of Samuel Garrigues, Thomas Riche and John Morgan; late the estate of Oswell Eve.

A tract of land of one hundred and seven acres, situate in the township of Abington, then in the county of Philadelphia, bounded by land of Joshua Knight, Ryner Tyson, Isaac Knight, senior, and Jacob Lippencott; late the estate of John Knight.

A moiety of one hundred acres of land, situate in Whitpain township, then in the county of Philadelphia, adjoining land of James Morris and John Roberts; late the estate of Isaac Taylor.

A moiety of forty-three acres of land, situate in Germantown, in the county of Philadelphia, adjoining lands of John Bringham and Doctor Warner, on the north side of the main road through Germantown township; late the estate of Abraham Pastorius.

And, likewise, the following rent charges, together with all the estate, interest and claim of the commonwealth, in and to the following lots and lands in the city of Philadelphia, from which they are respectively payable, together with all arrears of such rent charges; that is to say, two pounds *per annum*, payable to John Drinker, out of a lot and messuage, situate on the west side of Second-street, near to High-street, in the city of Philadelphia; late the estate of Samuel Shoemaker.

Thirty shillings *per annum*, payable by the representatives of Joseph Johnson, out of a lot and messuage adjoining the last mentioned lot; late the estate of Samuel Shoemaker.

Thirty shillings *per annum*, payable by Philip Syng, out of a lot and messuage adjoining the last mentioned lot; late the estate of Samuel Shoemaker.

Seven pounds and ten shillings *per annum*, payable by Frederick Shinkle, out of a lot and messuage adjoining to the lot last herein before mentioned, being the corner of High-street; late the estate of Samuel Shoemaker.

Two pounds *per annum*, payable by the representatives of Elizabeth Harman, out of a lot and messuage on the north side of High-

1785. street, adjoining the lot above mentioned ; late the estate of Samuel Shoemaker.

Two pounds *per annum*, payable by the representatives of Richard Parker, out of a lot and messuage adjoining the lot last mentioned ; late the estate of Samuel Shoemaker.

Seventeen pounds *per annum*, payable out of a bank lot, on the east side of Front-street on the Delaware, and between Mulberry and Sassafras-streets, but nigh to the latter ; late the estate of John Parrock.

Ten pounds *per annum*, payable out of a bank lot, adjoining on the south to the lot last herein before described, late in the tenure of William Niles, the same lot being in breadth on Front-street on the Delaware eighteen feet and eleven inches, and on Water-street eighteen feet and two inches and an half of an inch, and in depth, extending from Front-street, through to Water-street ; late the estate of John Parrock.

Two pounds and fourteen shillings *per annum*, payable out of a lot on the south side of Sassafras-street, between Front-street and Second-street from the Delaware, late in the tenure of Edward Brooks ; and late the estate of John Parrock.

Nine pounds *per annum*, payable out of a bank lot of ground on the east side of Front-street and on the north side of Sassafras-street, late in the tenure of Robert Black ; and late the estate of John Parrock.

Seven pounds and ten shillings *per annum*, payable out of a bank lot, adjoining the lot last herein described, late in the tenure of William Salsbury ; and late the estate of John Parrock.

Four pounds *per annum*, payable out of a lot, situate on the south side of Sassafras-street, between Front-street and Second-street from the Delaware, late in the tenure of Michael Dawson ; and late the estate of John Parrock.

Three pounds and six shillings *per annum*, payable out of a lot of ground, situate on the south side of Vine-street, between Front-street and Second-street from the Delaware, late in the tenure of George Herger ; and late the estate of John Parrock.

Three pounds and ten shillings *per annum*, payable out of a lot of ground, situate on the east side of Second-street from the Delaware, and on the south side of Vine-street, being the south-east corner formed by the said streets, late in the tenure of Adolph Gilman ; and late the estate of John Parrock.

Three pounds and ten shillings *per annum*, payable out of a lot of ground, adjoining to the last herein mentioned on the south, late in the tenure of Frederick Mause ; and late the estate of John Parrock.

Three pounds and two shillings *per annum*, payable out of a lot of ground, adjoining a lot of ground last herein mentioned on the south, late in the tenure of Charles Meredith ; and late the estate of John Parrock.

Six pounds *per annum*, payable out of a lot of ground, situate on the east side of Second-street from the river Delaware, between Sassafras-street and Vine-street, in the tenure of Jacob Brown ; late the estate of John Parrock.

SECT. III. And whereas the real estates herein before described, which have been reserved, set apart, and appropriated, by the Supreme Executive Council, for the purposes aforesaid, at the several valuations thereof respectively made by the Supreme Executive Council, and the said real estates purchased as aforesaid, at the prices at which they were severally sold, do not, when considered and taken together, amount to more than the yearly value of one thousand three hundred and eighty-one pounds five shillings and seven-pence half-penny, computing wheat at the rate of ten shillings per bushel, and it is proper that the same estates and interests herein before enumerated and described, and every of them, should be confirmed to the said trustees, their successors and assigns, for the uses in the act afore-recited, set forth and declared :

SECT. IV. *Be it therefore enacted, and declared by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same,* That the several confiscated estates, lands, tenements and hereditaments, and rent charges, herein before enumerated and described, with their and every of their rights, members and appurtenances, are, hereby, fully and absolutely vested in and confirmed unto the trustees of the University of the state of Pennsylvania, their successors and assigns, for ever, and for no other use, intent or purpose whatsoever ; saving and always reserving to all and every person and persons, bodies politic and corporate, his, her and their heirs and successors, (other than the persons attainted or forfeiting the same, and all persons and every person having or claiming any thing in the premises, under or to the use of any such forfeiting person, his, her or their heirs, executors or administrators,) all such estates, rights, titles and interest, of, in, to and out of the premises, or any of them, as they or any of them had before the passing of this act, or could or might have had or enjoyed, in case this act had not been made.

SECT. V. And whereas, in and by the act aforesaid, certain officers of the commonwealth, and divers ministers of the gospel, in respect of their offices and stations, together with sundry other persons therein named, and the successors of such other persons, to be elected and appointed in their room and stead respectively, were constituted trustees of the same University ; and although it was provided, in case any of the same persons should remove out of this state, that the office of such trustees should be thereby vacated, yet if any of the same persons shall willingly absent himself from the meeting of the said trustees for the space of one year, no remedy is given, and the business of the seminary may be thereby obstructed, and it is reasonable and proper that such absence should be considered and deemed to be a vacating of the seat of such person at the board of trustees :

SECT. VI. *Be it therefore enacted by the authority aforesaid,* That if any of the trustees of the University of the state of Pennsylvania, (not being a trustee in right of office or station,) shall willingly be absent from the meetings of the board of the said trustees, for and during the space of six months, the seat of such absenting trustees shall be deemed to be vacant, and the residue of the said trustees, or such of them as shall be regularly met, not be-

1785. ing fewer than eleven, shall and may proceed to elect a successor to such absenting trustee, as they would in case he had formally resigned his seat at the board of the said trustees of the said University.

SECT. VII. And whereas the trustees of the University of Pennsylvania have established a professorship in the same seminary, for teaching the learned languages through the medium of the German tongue, with one or more assistant teachers, as may be requisite :

SECT. VIII. *Be it therefore enacted by the authority aforesaid,* That the same professorship, and the assistant or assistants aforesaid, shall be continued in the said University, to teach the learned languages through the medium of the German tongue, as a part of the system of education carried on therein.

Passed 22d September, 1785.—Recorded in Law Book No. III. page 54. (i)

(i) In the case of the *Trustees, &c.* for lands and ground rents reserved to v. *The commonwealth*, in the Supreme Court, April, 1795. (MSS. Reports.) of them, or bought by their agents, in case of eviction under the act of 29th of March, 1779. It was held that the trustees of the University were entitled to compensation,

[The following act was, by mistake, omitted in its proper place in page 7, of this volume.]

CHAPTER DCCCCXXXVIII.

An ACT to incorporate the German society, contributing for the relief of distressed Germans in the state of Pennsylvania.

Passed 28th of September, 1781.—Private Act.—Recorded in Law Book, vol. I page 455.

A C T S

OF THE

General Assembly of Pennsylvania.

Passed during three Sessions—the first whereof commenced 24th of October, and ended 27th December, 1785. The second 21st of February, and ended the 8th of April, 1786, and the third the 22d day of August, and ended the 27th day of September, 1786, being the tenth General Assembly of the commonwealth.

THOMAS MIFFLIN, SPEAKER.

1785.

CHAPTER MCLXXXV.

An ACT empowering certain trustees, therein named, to sell and dispose of two certain tracts or parcels of glebe-land and premises, situate in the township of Salisbury, in the county of Lancaster, and to secure the annual interest arising from the sale thereof, towards the maintenance and support of the minister, for the time being, of the Protestant Episcopal Church of St. John, on Pequea.

Passed 28th November, 1785.—Private Act.—Recorded in Law Book No. III.
page 66.

CHAPTER MCLXXXVI.

An ACT empowering certain trustees, therein named, to sell and dispose of certain lands and premises, and to apply the monies arising therefrom towards the building of a Parsonage-house, for the use of the Minister, for the time being, of the Protestant Episcopal Church of St. James, in the borough of Lancaster, and for other purposes therein mentioned.

Passed 28th November, 1785.—Private Act.—Recorded in Law Book No. III.
page 67.

1786.

CHAPTER MCXC.

An ACT for incorporating the Society, known by the name and style of the Mutual Assurance Company, for insuring houses from loss by fire; to ratify and confirm the articles of agreement of the contributors; and to enable them to make suitable by-laws, for the better management and prosecution of their said design.

Passed 27th February, 1786.—Private Act.—Recorded in Law Book No. III. page 71.

CHAPTER MCXCII.

An ACT for the incorporating the congregation of the Protestant Episcopal Church, commonly called Bangor Church and School, in Church-town, Carnarvan township, and county of Lancaster.

Passed 1st March, 1786.—Private Act.—Recorded in Law Book No. III. page 77.

CHAPTER MCXCVI.

An ACT to incorporate the Episcopal congregation belonging to St. Peter's Church, in the Great Valley, in the township of Trediffrin, and county of Chester.

Passed 4th March, 1786.—Private Act.—Recorded in Law Book No. III. page 86.

CHAPTER MCXCVII.

An ACT for removing the Protestant Episcopal chapel of St. Thomas, in Carnarvan township, Berks county, and for incorporating the congregation thereof.

Passed 6th of March, 1786.—Private Act.—Recorded in Law Book No. III. page 86.

CHAPTER MCC.

A SUPPLEMENT to the act, entitled "An Act to regulate the fisheries in the river Schuylkill." (k)

SECT. I. WHEREAS it appears to this House, by the petitions from a considerable number of freeholders and others, proprietors of, and interested in, the shad fisheries in the river Schuylkill, that, by the operation of the above recited act, passed the twenty-eighth day of March last, they are deprived of certain privileges, which they held under former laws for the regulating of the fisheries in the said river; first, by being prevented from fishing on Friday nights and Saturdays; and Secondly, by allowing the shad fishing to be carried on so late in the season in the upper parts of the said

(k) For the original act, see ante chap. 1135; and for a reference to the various acts on the same subject, see the note subjoined to, chap. 465, vol. 1, page 235. (Note to former edition.)

river, to the manifest destruction of the breed of fish : For remedy whereof, 1786.

SECT. II. *Be it enacted, and it is hereby enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same,* That it shall and may be lawful, from and after the passing of this act, to and for any person or persons, having a pool or fishery in the said river, to cast, draw or haul, any seine or net, constructed for the catching of shad (under and subject to the regulations, restrictions, fines and penalties, mentioned in the act to which this is a supplement,) at any time or times between the sun's rising on Monday morning, and the sun's setting on Saturday evening following, in every week during the shad fishing season.

At what times during the season the shad fishery in the Schuylkill may be carried on.

SECT. III. *Provided always, nevertheless, and be it further enacted by the authority aforesaid,* That no person or persons shall draw or use any net or seine, for the purpose of catching shad, or such as are suitable for that purpose, in the said river, or be aiding or assisting therein, between the mouth thereof and the lower falls, five miles from the city of Philadelphia, after the twentieth day of May, or between said falls and the Black Rock, near the mouth of French creek, after the twenty-fifth day of said month, nor in any part of said Schuylkill river, above the said Black Rock, after the first day of June in every or any year.

Seasons for fishing prescribed and limited.

SECT. IV. *And provided also,* That from and after the first day of June, until the first day of July, annually, no brush net, or other net or seine, of any kind whatsoever, shall be cast or drawn in any part of the said river, under the penalty of ten pounds, to be recovered before any Justice of the peace.

From the 1st of June till the 1st of July annually, no net or seine to be cast or drawn.

SECT. V. *And be it further enacted by the authority aforesaid,* That all fines and penalties that shall hereafter be recovered, by virtue of the act to which this is a supplement, or by this act, shall be double the sum in every case to what they were in the aforesaid act, to which this is a supplement, and shall be paid, one half thereof to the informer or prosecutor, and the other moiety thereof to the commissioners for clearing the river Schuylkill, &c. to be applied by them for that purpose, any thing in the said recited act to the contrary in anywise notwithstanding.

Fines and penalties doubled; how and for whose use to be recovered.

SECT. VI. *Provided always,* That if any person or persons shall apprehend him or themselves aggrieved by the determination of any Justice of the peace, in consequence of this act, or of the act to which this is a supplement, he or they shall have a right of appeal from the judgment of the said Justice, to the next court of Quarter Sessions of the proper county, and, if the defendant see cause, of trial by jury, upon condition that he or they give security to prosecute the same to effect.

Appeal allowed to persons aggrieved;

SECT. VII. *And provided also,* That no appeal be allowed, unless the same be made within six days after such determination.

but to be made within six days.

SECT. VIII. *And be it further enacted by the authority aforesaid,* That so much of the said recited act, to which this is a supplement, as is hereby altered or amended, and no more, is hereby repealed, and made null and void.

Repeal of so much of a former act, as is here altered.

1786.

CHAPTER MCCII.

A SUPPLEMENT to an act, entitled "An Act for vesting in the American Philosophical Society, held at Philadelphia, for the promoting useful knowledge, a certain lot of ground, being part of the state-house square." (l)

Passed 17th March, 1786.—Private Act.—Recorded in Law Book No. III. page 92.

(l) By this act the society were empowered to let the vaults or cellars of the building erected on the lot granted to them by a former act (ante. chap. 1136,) and, also, such other parts of the building as they deem proper, for

purposes that have an affinity with the design of their institution, and no other; and provided, that the rents and profits are applied to such purposes. See vol. 1, page 502. (*Note to former edition.*)

CHAPTER MCCV.

An ACT authorizing the Supreme Executive Council to appoint a commissioner, or commissioners, to view and open a road from the Lehigh Water-Gap, in the county of Northampton, to Wyoming, in the county of Northumberland, and for other purposes therein mentioned.

[SECT. I. COMMISSIONERS to be appointed to lay out a state highway from the *Lehigh Water-Gap* to *Wyoming*, to be of the breadth of sixty feet, throughout the whole length of the same. The executive had power either to confirm the report or to order a review thereof. And the said highway, when established, to be and remain a state highway, and the courses and distances, and other circumstances of the said highway, to be entered at length in the council books, which entry shall be deemed a record thereof. Compensation was fixed to the commissioners, and £. 300 appropriated for the purposes of this act.] (m)

Passed 23d March, 1786.—Recorded in Law Book No. III. page 94.

(m) The return of this road is deposited in the secretary's office, with a draft, and the courses and distances annexed. But it does not appear to have been entered of record on the council books.

See an act to incorporate a company to make a turnpike road from *Easton* to *Wilks Barre*, passed 11th of February, 1803, (chap. 2317.)

CHAPTER MCCVI.

An ACT to empower the Wardens of the city of Philadelphia to extend the market-house in High-street, from Third-street to Fourth-street, from Delaware river, and to continue the same from time to time westwardly, from one street to another, in the middle of High-street, as the Wardens of the said city shall think necessary, and for other purposes therein mentioned. (n)

SECT. I. WHEREAS, the inhabitants of the city of Philadelphia, and the counties bordering thereon, have represented to

(n) For the suppression of the War-dan's office, and the transfer of their powers to the Corporation, see the act of the 11th of March, 1789, (chap.

this House the necessity there is of extending the market-house in High-street, westward, in the city of Philadelphia, that the old market-house was become by far too small for the accommodation of the people from the different parts of the country, who are often exposed to the inclemency of the weather, without shelter, in rain or snow, to the great danger of their health, and inconveniency of the inhabitants of the said city, and that custom and long usage have fixed High-street as the most eligible and central place for the market-house to be continued: 1786.

SECT. II. *Be it therefore enacted, and it is hereby enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same,* That, from and after the passing of this act, it shall and may be lawful to and for the Wardens of the city of Philadelphia, or a majority of them, and they are hereby enjoined and required to contract for materials, and employ workmen to build and extend the market-house in High-street, along the middle thereof, from Third-street to Fourth-street, within the present or the next succeeding year, and so on from time to time, as necessity or occasion shall require, to extend the market-house in High-street from street to street, westward, as often as the Wardens of the said city, or a majority of them, shall think proper for the benefit and advantage of the inhabitants of the said city, and for the accommodation of the country people bringing provisions to market for sale.

The Wardens empowered, from time to time, to extend the market in High-street.

SECT. III. And in order to afford a convenient opportunity for the turning of waggons and other carriages, *Be it further enacted by the authority aforesaid,* That the first shambles or market-house, as it shall or may be extended in all or any of the said High-street, shall not approach or be continued nearer than thirty feet to the line or lines of any of the streets crossing the aforesaid High-street.


Boundaries of the market-house to the cross-streets.

SECT. IV. And in order that those, who attend the said market with herbage and vegetables, may be accommodated with a more convenient shelter under the eaves thereof, as well as to afford a wider space for the passage of carriages, *Be it further enacted by the authority aforesaid,* That the width or breadth of the said shambles or market-house shall not be more than eighteen feet, from the outside of any one pier or column thereof to the outside of any other pier or column of and opposite to the same; and that the roof of the said shambles or market-house shall have the same elevation and projection with that already erected, and no more.

Width of the market-house, and elevation of the roof.

SECT. V. *And be it further enacted by the authority aforesaid,* That for the better carrying on the said building, and for finishing and completing the same, until money can be raised on the inhabitants of the said city for defraying the expenses thereof, it shall and may be lawful to and for the Wardens of the city of Philadelphia, and they are hereby authorized and empowered, to borrow from any person or persons, bodies politic or corporate, who shall be willing to lend the same, any sum or sums of money, not exceeding in the whole two thousand pounds, to be by them applied towards the pay-

Money how to be raised and paid, to defray the expense.

1786.  ment of the debts hereafter to be contracted by the said Wardens for the uses and purposes aforesaid; and that every lender of monies in pursuance of this act shall immediately receive a certificate, in writing under the hands and seals of the Wardens of the city of Philadelphia, or a majority of them, for the payment of the sum lent, with the interest agreed on, not exceeding six *per centum per annum*; which certificate shall be registered in a book to be kept by the Wardens for that purpose, and the interest money thereon accruing shall be paid by the said Wardens every year.

Certificates granted to the lenders of money transferable.

SECT. VI. *And be it further enacted by the authority aforesaid,* That all and every lender or lenders of money, his, her or their executors, administrators or successors, may assign and transfer, his, her or their certificate, with all his, her or their right or interest therein, by an endorsement thereon, to any other person or persons; and such assignee may, in like manner, assign, transfer, and set over the same again, and so on, *toties quoties*; and afterwards it shall not be in the power of the person so assigning to release, make void, or discharge the said certificate.

A tax to be assessed and raised for paying off the certificates.

SECT. VII. *And be it further enacted by the authority aforesaid,* That for the better enabling the Wardens of the city of Philadelphia to complete the market-house aforesaid, and to pay and discharge all and every of the said certificates, so by them, or a majority of them, to be issued and given for money borrowed, and the interest thereof, in manner aforesaid, it shall and may be lawful to and for the said Wardens to levy taxes upon the inhabitants of the city of Philadelphia, and upon all estates, real and personal, and taxables, within the bounds of the said city, in the same manner as taxes are by law levied and collected for the support of the nightly watch, and enlightening the streets, lanes and alleys of the city of Philadelphia, and so annually, until the whole of such certificates, both principal and interest, are finally discharged and paid; and also for the payment of such debts as may be contracted for the purpose aforesaid, over and above the said sum of two thousand pounds, so directed to be borrowed by the said Wardens, should that sum prove insufficient to answer the purposes hereby intended.

One half the market-house to be appropriated, free of rent, for the country people; the other to be rented by the Wardens.

SECT. VIII. *And be it further enacted by the authority aforesaid,* That when the market-house shall be finished and completed, the one half of the building so erected shall be and remain free for the country people attending the said market for ever, and that no fees, tolls or perquisites, be demanded or exacted from them for the use thereof. And that the Wardens of the city of Philadelphia be authorized to let or demise the stalls, which they may erect in the other half of the said building, to any person or persons, for such yearly rents and reservations as shall be agreed upon; and the rent arising from such stalls shall be paid to the Treasurer of the Wardens of the city of Philadelphia for the time being, for the use of the said city, and for no other purpose whatsoever.

Passed 2d March, 1786.—Recorded in Law Book No. III. page 95. (o)

(o) By an act passed 19th of March, 1804, (chap. 2162.) The Select and Common Councils of the city of Philadelphia, are authorized to erect new

Market-houses within the same as to them may appear most convenient and conducive to the interests of the citizens and others, &c. and to make such

regulations for the well government of the market as to them, shall appear useful and necessary, and not inconsistent with the existing laws of the commonwealth provided that one half of the buildings so erected shall remain free for the use of the country people attending said market, and that no fees, tolls or perquisites, shall be demanded or exacted from them for the use thereof.

And by an act passed 25th of March, 1805. The said Councils, and the corporations of Southwark and Northern Liberties, are authorized to pass ordinances for regulating markets holden on Sunday.

By an additional supplement, passed 19th of March, 1810. The corporation of the city, as often as they shall think proper, may extend the market-house in High-street, or elsewhere, in the said city, or build a market-house or houses, and let or demise the one half of the stalls which they may erect, to

such persons from the country, as send or carry the produce of their farms to the said market, and to no others, and the other half, at their discretion, to such person or persons, butchers or victuallers, as to them may seem proper.

Whenever the market-houses in High-street shall be extended, it shall not be lawful for any victualler to sell any beef in the western moiety of any market-house, or shambles, that may be erected at any time hereafter in High-street. But that the western moiety shall be let to such persons from the country, who send or carry the produce of their farms to market, and to no others; and that the one half of the stalls that may be erected elsewhere, shall also be let to such persons from the country who send or carry the produce of their farms to market, and to no others; *Provided*, That the annual rent so to be charged and received, shall not exceed twenty dollars *per* stall.

CHAPTER MCCX.

An ACT to empower the Justices of the Supreme Court to supply defects in the titles to lands, occasioned by the loss of deeds or writings respecting the same, or where they have been defaced or rendered illegible by time, or accident.

SECT. I. WHEREAS many persons have lost their deeds, conveyances and writings, relating to their lands, tenements, hereditaments and possessions, within this state, particularly during the late war between the United States of America and Great-Britain, some of whom, at the time of the invasion of this state by the British army, buried them under ground, with an intention of providing for their safety, whereby, and from other causes, they have been defaced, and, in many material places, rendered illegible: For remedying of such imperfections, defects and losses,

SECT. II. *Be it enacted, and it is hereby enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania in General Assembly met, and by the authority of the same, That* where any person or persons have lost their deed or deeds, conveyances or writings, concerning their lands, tenements, hereditaments or possessions, or where the same are defaced, or rendered illegible, in whole, or in part, and if such person or persons shall be desirous to have the said defects and imperfections in their titles supplied, he, she or they, may apply to the Justices of the Supreme Court, or any two of them, by bill or petition, therein setting forth the case and the circumstances thereof; which said court, affidavit being made of the material facts, may, and they are hereby authorized and empowered to issue a subpoena for any person or persons, who may appear to be interested in the matters contained in the said

Deeds lost, or defaced, how to be supplied, on petition to the Supreme Court, or any two of the Justices thereof.

1786. bill or petition, if residing within this state, and if without the same, the said court may direct and order an advertisement to be published for three weeks, or more, in some of the public newspapers in the city of Philadelphia, giving notice of the said application, and requiring all persons whom it may concern to appear in court, in term time, or before the Justices thereof, or any two of them, in the vacation, at a certain place and time, to make their answer, upon oath or affirmation, to the said bill or petition: And when the answer is filed, or in case the parties subpoenaed, or any others, do not attend or answer, that in either case the said court, in term time, or the Justices thereof, or any two of them, in the vacation, may and shall examine any witness or witnesses who may be produced, or cause their depositions to be taken before some person or persons, by them authorized and appointed to take the same by commission or order, respecting the facts alleged in the said bill and petition, and have such other proceedings, in a summary way, to ascertain and establish the said facts, and make such order and decree in the premises, as to justice and equity shall appertain.

Force of the record, and proceedings thereon as evidence.

SECT. III. *And be it further enacted by the authority aforesaid,* That the record and proceedings made and had in manner aforesaid, or a copy thereof, authenticated under the hand of the Prothonotary and seal of the said court, may and shall, at all times thereafter, be read upon any trial or controversy respecting the lands, tenements, hereditaments, or possessions, described or mentioned in such bill or petition, and shall be taken and allowed as good and sufficient evidence of the facts so decreed and established, any law, usage or custom, to the contrary notwithstanding.

The expense to be defrayed by the petitioner; and the costs taxed by the court.

SECT. IV. *And be it enacted by the authority aforesaid,* That all and singular the proceedings, so to be had in the said Supreme Court, shall be at the expense of the party or parties exhibiting the bill or petition; and that the costs in such cases shall be taxed by the said court, or one of the Justices thereof, as nearly agreeable to the fees allowed for the like services in other actions, amicable or adversary, as circumstances will admit.

Limitation of the act.

[SECT. V. *And be it enacted by the authority aforesaid,* That this act shall continue in force for the space and term of five years, from the first day of January next, and no longer.]

Passed 23th of March, 1786.—Recorded in Law Book No. III. page 101. (p)

(p) By an act passed 19th of Jan'y, 1795, (chap. 1639,) this act is revived without limitation, and the same power vested in the respective courts of Common Pleas of the counties, with direc-

tion as to the mode of proceeding, and a declaration that a copy of the record shall be good evidence of the facts decreed.

CHAPTER MCCXIII.

1786.

An ACT for the present relief and future endowment of Dickinson college, in the borough of Carlisle, and county of Cumberland, in this state, and for reserving part of the unappropriated lands belonging to this state, as a fund for the endowment of public schools, agreeably to the forty-fourth section of the constitution of this commonwealth.

SECT. I. **WHEREAS**, by the forty-fourth section of the constitution of this state, it is provided, "That a school or schools shall be established in each county by the legislature, for the convenient instruction of youth, with such salaries to the masters, paid by the public, as may enable them to instruct youth at low prices; and all useful learning shall be duly encouraged and promoted in one or more Universities;" which wise regulations, in the present embarrassed state of public credit, cannot be carried into immediate execution, but every encouragement in the reasonable power of the state is due and ought to be given to those, who, upon their private credit, or by general subscription, shall promote the institution of seminaries of useful learning: And whereas a number of citizens of this state, impressed with the utility of establishing a seminary of learning, for the benefit of the inhabitants in the western counties, opened a subscription for that purpose, which was liberally encouraged by divers well disposed subscribers, upon whose application to the legislature, a law was passed on the ninth day of September, one thousand seven hundred and eighty-three, whereby a public seminary of learning was founded, established and incorporated, in the borough of Carlisle, by the name, style and title of Dickinson College, which, under the care and good management of the trustees, is rapidly growing, and promises to be of great advantage, by largely diffusing the liberal arts: And whereas it appears by the representations of the said trustees, that the number of pupils, now incumbent on their studies in the different branches of literature in the said school, is so great, that the infant funds of the institution are not sufficient to provide them with accommodations, wherefore they have prayed the temporary aid of this and a former House of Assembly, and also that provision may be made for a more permanent endowment for the future support thereof; and this House, sensible of the high importance of training up a succession of youth in useful and liberal knowledge, to qualify them for filling the places of their elders and predecessors, who in the usual course of nature must gradually be called from the active duties of this life, have thought it expedient to comply with their prayer by a moderate donation, consistent with that œconomy which is at present so necessary to be preserved in the application of the public property:

SECT. II. *Be it therefore enacted, and it is hereby enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same, That the sum of five hundred pounds be, and the same is hereby,* Grant of 500 pounds to Dickinson College. *given and granted to the trustees of Dickinson College, for the use of the said college. And in order that the said institution may not*

1786.

How payable.

suffer by delay in receiving the sum so granted: *It is hereby enacted by the authority aforesaid*, That the President or Vice-President of the Supreme Executive Council shall, and they are hereby authorized and required, forthwith, upon application of the trustees aforesaid, to draw an order on the treasurer of this state, in favour of the said trustees, for the said sum of five hundred pounds, which payment shall be allowed in the settlement of his accounts.

SECT. III. And whereas the unappropriated lands within this state, belonging to the public, afford an ample fund for the endowment of colleges and schools at a future day, without any present advance or public inconvenience, and at the least possible expense to the community, and at the same time certainly effective in the event; and the said college at Carlisle has just title, under the said provision in the constitution, not only from its early institution, under private patronage, but from its rapid growth, to be now provided for.

Grant of
10,000 acres
of land to
the college.

SECT. IV. *It is therefore hereby enacted by the authority aforesaid*, That ten thousand acres of land, together with six *per centum* allowance for roads, to be located, set out and surveyed, within the unappropriated lands belonging to this state, be, and they are hereby granted to the trustees of Dickinson College, to have and to hold the same to them, their successors and assigns, for ever.

The lands
how to be
surveyed,
and patent-
ed.

SECT. V. And in order to facilitate the locating, setting out and surveying the said lands for the said trustees, and securing them to the use of the said college: *It is hereby enacted by the authority aforesaid*, That upon the applications of the said trustees, or of any person duly authorized by them, to the Secretary of the Land-Office of this state, he shall grant and issue, and is hereby authorized and required to grant and issue, such and so many warrants, to be directed to the Surveyor-General of the state, requiring him to survey, or cause to be surveyed for the trustees of Dickinson College, such and so many tracts of land, with such number of acres in each warrant, as shall be applied for at each and every time of application, in such places, not already appropriated by acts of Assembly of the state to particular uses, nor before located or surveyed by or for private persons, as shall, in the whole, amount to the said quantity of ten thousand acres, and the usual allowance, and no more; and that the Surveyor-General shall receive and enter all such warrants in his office, and issue copies thereof, directed to his deputies in the different counties and districts within the state, and the said deputies shall execute the same, and make returns thereof, and thereupon such proceedings shall be had, and patents or grants of confirmation for the same shall be granted and issued to the trustees of Dickinson College, in the same manner and form, and having the like force and effect, as the like proceedings and patents have been and are conducted and granted, in case of private persons making application for and taking up lands, under the laws of the state, in such case made and provided.

SECT. VI. And whereas the same reasons which induce this House to provide for the future support of the said college equally hold and apply for providing a fund, whereout hereafter to endow the public schools, agreeably to the constitution of this state:

SECT. VII. *It is therefore hereby enacted by the authority aforesaid,* 1786.
That sixty thousand acres of land, part of the unappropriated lands belonging to this state, be, and they are hereby reserved and appropriated for the sole and express purpose of endowing public schools in the different counties of this state, agreeably to the said forty-fourth section of the constitution.

General appropriation of 60,000 acres of land, for the endowment of public schools.

How the same shall be surveyed and returned.

SECT. VIII. And in order that the quantity of lands, hereby reserved and appropriated as aforesaid, may be located, set out and surveyed, for the uses aforesaid; *It is hereby enacted by the authority aforesaid,* That the Supreme Executive Council of this commonwealth shall, and they are hereby enjoined and required, forthwith after the passing of this act, to order and direct the Secretary of the Land-Office, and the said Secretary, upon such their orders and directions, is hereby required and enjoined to issue such and so many warrants, to be directed to the Surveyor-General of the state, requiring him to survey, or cause to be surveyed, for the use of public schools, established or to be established within this state, such and so many tracts of land, with such number of acres in each warrant, as shall be directed by the Supreme Executive Council, in such places, not already appropriated by acts of Assembly to particular uses, nor before located or surveyed by or for private persons, or bodies politic, as shall in the whole amount to sixty thousand acres, and the usual allowance for roads, and no more, and that the Surveyor-General shall receive and enter in his office all such warrants, and issue copies thereof, directed to his deputies in the different counties and districts within the state, and the said deputies shall execute the same, and make returns thereof, and thereupon such proceedings shall be had, and the business thereof shall be conducted in the same manner and form, as in cases of warrants issued, and surveys returned, for and in the names of private persons making applications for and taking up lands, under the laws of the state, in such cases made and provided, excepting only that the warrants to be granted in pursuance hereof shall not be confined to any given number of acres.

SECT. IX. *And it is hereby further enacted by the authority aforesaid,* That all and every the tracts and tract of land hereby directed to be surveyed, as well for the use of the Trustees of Dickinson College aforesaid, as for the use of public schools, shall be so done at the charge of the state, and the Supreme Executive Council are accordingly authorized to draw orders on the State Treasurer, to pay and defray all charges arising thereupon.

The expense of both surveys to be defrayed by the state.

SECT. X. *And it is hereby further enacted by the authority aforesaid,* That the said sixty thousand acres of land, with the usual allowance of six *per centum* for roads, hereby reserved out of the unappropriated lands of the state, and so as aforesaid directed to be surveyed, set out, located and appropriated, shall be and remain a fund for the endowment of public schools within the several counties of this state, agreeably to the said forty-fourth section of the constitution of this commonwealth, and shall not otherwise be disposed of, nor shall the same, or any part thereof, be granted or appropriated to any particular school, but by the acts of the legislature

The 60,000 acres to be reserved as a fund exclusively, for the endowment of public schools under grants of the legislature.

1786. of this state, from time to time, to be made in pursuance of the said provision of the constitution. (q)

Passed 7th April, 1786—Recorded in Law Book No. III. page 103.

(q) See the act for the establishment and incorporation of Dickinson College, *ante* pag 71 (chap. 1018.)

A lot of ground in the borough of Carlisle, granted to it, (chap. 1357, 3d of October, 1788.)

The sum of £.1500 granted to it, for its immediate relief, 30th of September, 1791, (chap. 1567.)

The sum of five thousand dollars granted for its relief, and ten students to be annually admitted, to be taught *gratis*, but the number at no time to be greater than ten, and none to continue longer than two years. See act of 11th of April, 1795, (chap. 1817.)

A loan of six thousand dollars to the college, out of the arrearages of state

taxes, due from Cumberland county, to be secured by mortgage of the lands granted by the act in the text. See act of 24th of March, 1803, (chap. 2348.)

The buildings having been consumed by fire, and a new building having been erected, four thousand dollars, in addition, were loaned to the college, free of interest for five years after passing the act, and satisfaction to be entered on the former mortgage, and a new mortgage to be taken on 5000 acres of their land, to secure the repayment. See act of 24th of February, 1806, (chap. 2639.)

For the appropriation of the lands reserved for public schools. See the general index, titles, *Colleges, Academies*.

CHAPTER MCCXIV.

An ACT for directing the sale of such of the city lots as remain the property of the state, and for disposing of the house and lots in High-street, in the city of Philadelphia, late the estate of Joseph Galloway, and forfeited to this commonwealth.

SECT. I. WHEREAS many of the lots which were sold pursuant, to an act of Assembly, passed the tenth day of April, one thousand seven hundred and eighty-one, entitled "An Act for the better support of the public credit, by an immediate sale of the lands therein mentioned, and fully securing the purchasers thereof in their titles, and also for preserving the common lands appurtenant to the city of Philadelphia, and other towns in this state, from unwarrantable encroachments," have reverted to the state, on account of the non-compliance of the purchasers with the terms of sale: And whereas there was a considerable number of the said lots remaining, which were not sold as aforesaid: And whereas the house and lots on Market-street, late the property of Joseph Galloway, forfeited to this commonwealth, and appropriated, by act of Assembly of the eighteenth day of March, one thousand seven hundred and seventy-nine, to the use of the President of the Supreme Executive Council, for the time being, or to such other uses as the General Assembly should direct and appoint, now lie waste and unoccupied, and on account thereof the house aforesaid is fast going to ruin and decay: And whereas there are numerous debts due by this state, which must be discharged: And whereas it is incumbent on the legislature to provide for the means of doing it, in such manner as shall be consistent with justice, and least distressing to the people; And whereas the property hereinbefore mentioned will, if sold, provide for extinguishing a considerable portion of those debts, and thereby

[See an act passed 5th of April, 1797 [chap. 1943] This act is now without any further use, than as evidence of titles which may be held under it.]

ease the good people of this state of so much of their debt, and the interest thereof, as shall be thus discharged; Therefore, 1786.

SECT. II. *Be it enacted, and it is hereby enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same,* That such of the said city lots, as have so reverted to or remained the property of the state, excepting eight of the same lots, marked in the plan or draught of the public city lots number thirty-four, thirty-five, thirty-six, thirty-seven, thirty-eight, thirty-nine, forty, and forty-one, shall be sold, under the direction of the Supreme Executive Council, who are hereby directed immediately to give at least fifteen days notice, in two or more of the newspapers printed in this city, of the time and place of sale.

The city lots (except those specified) remaining the property of the state to be sold.

Provided always, That the Supreme Executive Council, be, and they are hereby authorized and required to reserve so many of the public lots, as shall be at least two hundred feet, and not more than four hundred feet, square, in such part of the city as they may judge most convenient, to be appropriated as a burial ground for the interment of deceased strangers, and such other persons, who may not have been in communion with any religious society at the time of their decease.

Public lots to be reserved for a strangers burial ground.

SECT. III. *And be it further enacted by the authority aforesaid,* That the deeds granted, or titles which shall be made, for all lots sold, as by this law directed, shall be according to the tenor and terms of the act, entitled "An Act for the better support of the public credit, by an immediate sale of the lands therein mentioned, and fully securing the purchasers thereof in their titles; and also for preserving the common lands, appurtenant to the city of Philadelphia, and other towns in this state, from unwarrantable encroachments," passed on the tenth day of April, one thousand seven hundred and eighty-one, and shall vest the purchaser or purchasers, his, her or their heirs or assigns, with similar advantages and emoluments, and the claimants which may appear of any lots so sold shall prosecute his, her or their claims in like manner, and under like restrictions, as directed by the said last recited act, and shall be entitled to like privileges and advantages.

Form of the deeds for the lots sold.

SECT. IV. *And be it further enacted by the authority aforesaid,* That the said Supreme Executive Council shall also direct the sale of the mansion-house and lots adjoining on Market-street, as aforesaid, in the city of Philadelphia, late the property of Joseph Galloway, and which were, by act of General Assembly of the eighteenth day of March, one thousand seven hundred and seventy-nine, appropriated as aforesaid, to be sold, in like manner as the city lots herein before mentioned.

The house in Market-street, heretofore appropriated for the use of the President, to be sold.

SECT. V. *And be it further enacted by the authority aforesaid,* That the purchase money of the said lots and mansion-house shall be paid in specie, bills of credit of this state of the last emission, depreciation certificates, or in other certificates of debts due by this state, on which the interest is receivable at the treasury of this commonwealth.

Price of the lots, in what to be paid.

SECT. VI. *And be it further enacted by the authority aforesaid,* That the amount of the sales of said lots and house shall be paid

The proceeds of the sales to be

1786.
 paid to the
 Receiver-
 General.

to, received by, and accounted for, by the Receiver-General of the Land-Office, in like manner as is directed for receiving and paying other monies or securities received by him, according to former laws of this state.

Passed 8th of April, 1786.—Recorded in Law Book No. III. page 105.

CHAPTER MCCXVIII.

An ACT for incorporating the German reformed congregation in the borough of Reading, in the county of Berks.

Passed 25th August, 1786.—Private Act.—Recorded in Law Book No. III. page 122.

CHAPTER MCCXX.

An ACT for vesting certain city lots therein mentioned in trustees, for a burial ground for the use of the religious society of Free Quakers, in the city of Philadelphia.

Passed 26th of August, 1786.—Private Act.—Recorded in Law Book No. III. page 121.

CHAPTER MCCXXI.

An ACT to incorporate the Presbyterian congregation in the borough of Carlisle, in the county of Cumberland.

Passed 26th of August, 1786.—Private Act.—Recorded in Law Book No. III. page 145.

CHAPTER MCCXXII.

An ACT to incorporate the Presbyterian congregation of Brandywine, in the township of Westnantmill, in the county of Chester.

Passed 1st September, 1786.—Private Act.—Recorded in Law Book No. III. page 152.

CHAPTER MCCXXIII.

An ACT for incorporating the Baptist church in the township of New-Britain, and county of Bucks.

Passed 6th September, 1786.—Private Act.—Recorded in Law Book No. III. page 142.

CHAPTER MCCXXIV.

1786.

An ACT to discharge and annul the declaration of trust relating to the Scots Presbyterian church in the city of Philadelphia, so far as the said instrument incumbers the same church with subjection to foreign jurisdiction.

Passed 6th September, 1786.—Private Act.—Recorded in Law Book No. III. page 120.

CHAPTER MCCXXV.

A SUPPLEMENT to an act, entitled “An act to establish and incorporate a public school at Germantown in the county of Philadelphia.” [Chap. 1098, original act.]

Passed 6th September, 1786.—Private Act.—Recorded in Law Book No. III. page 139.

CHAPTER MCCXXVII.

An ACT to incorporate the Presbyterian congregation in Donegal township, in the county of Lancaster.

Passed 11th September, 1786.*—Private Act.—Recorded in Law Book No. III. page 135.

* This act is dated in the roll, 1787, but is recorded with the laws of the present session.

CHAPTER MCCXXVIII.

An ACT for confirming and amending the charter of the German reformed congregation in the borough of Lancaster, in the county of Lancaster, in the state of Pennsylvania.

Passed 11th September, 1786—Private Act.—Recorded in Law Book No. III. page 153.

CHAPTER MCCXXIX.

An ACT for incorporating the Presbyterian congregation of Bensalem, in the county of Bucks.

Passed 11th September, 1786.—Private Act.—Recorded in Law Book No. III. page 140.

CHAPTER MCCXXXI.

An ACT for altering and amending an act, entitled “An act to regulate the general elections of this commonwealth, and to prevent frauds therein.”

SECT. VII. AND whereas the election districts, by law established, in the counties of Philadelphia, Chester, Lancaster, York,

1786. Cumberland, Bedford, Northumberland, Westmoreland and Dauphin, are found to be inconvenient: Therefore, *Be it enacted by the authority aforesaid*, That the elections for the county of Philadelphia, exclusive of the city of Philadelphia, shall hereafter be holden in three districts, viz. The freemen of the district of Southwark, and of the townships of the Northern-Liberties, Moyamensing, Passyunk, Blockley and Kingsessing, shall hold their elections at the State-house, in the city of Philadelphia; the freemen of the townships of Germantown, Roxborough and Bristol, shall hold their elections at the Union school-house, in Germantown; and the freemen of the other townships in the said county shall hold their elections at the house of John Barnesly, in Bustletown, in the township of Lower-Dublin.

Alterations
in the elec-
tion districts
of Chester.

SECT. VIII. *And be it further enacted by the authority aforesaid*, That the elections for the county of Chester, which for that purpose shall be divided into four districts, shall be holden at four places, viz. the freemen of the townships of Goshen, East-Bradford, West-Bradford, West-Town, Concord, Thornbury, Birmingham, Edgemont, East-Town, Kennet, Pennsbury, Newlin, East-Fallowfield, Willistown and Bethel, being the first district, shall hold their elections at the court-house, in the township of Goshen; the freemen of the townships of Tredyffrin, West-Whiteland, East-Calm, West-Calm, West-Nantmill, East-Nantmill, Charlestown, Uwchland, Pikeland, Vincent, Coventry and East-Whiteland, being the second district, shall hold their elections at the sign of the Red Lion, in the township of Uwchland; the freemen of the townships of London-Grove, London-Britain, Londonderry, New-London, New-Garden, East-Marlborough, West-Marlborough, East-Nottingham, West-Nottingham, West-Fallowfield, Oxford and Sadsbury, being the third district, shall hold their elections at Chatham, formerly called the Half-way House; the freemen of the townships of Chester, Upper-Chichester, Lower-Chichester, Ashtown, Middletown, Upper and Nether-Providence, Ridgeley, Marple, Springfield, Darby, Haverford, Radnor, Tinicum and Newtown, being the fourth district, shall hold their elections at the house of Mary Withy, in the town of Chester.

SECT. IX. And whereas there has not been any courts held at the new court-house in the township of Goshen, in the county of Chester, and it may be doubtful where to make the returns of the district elections in and for said county: *Be it therefore enacted by the authority aforesaid*, That the returns of the district elections in and for the county of Chester shall be made at the new court-house in the township of Goshen, in said county.

Where the
Chester re-
turns shall be
made.

Alterations
in the elec-
tion districts
of Lancas-
ter;

SECT. X. *And be it further enacted by the authority aforesaid*, That from henceforth the elections for the county of Lancaster, which for that purpose shall be divided into four districts, shall be holden at the four following places, viz. the freemen of the borough of Lancaster, and of the townships of Lancaster, Strasburg, Warwick, Elizabeth, Manheim, Hempfield, Manor, Conestogoe, Cocallicoe and Lampeter, being the first district, shall hold their elections at the court-house in the borough of Lancaster; the freemen of the townships of Little Britain, Drumore, Bart, Colerain,

1786.

Martick and Sadsbury, being the second district, shall hold their elections at the house of Colonel James Porter, in Drumore township; the freemen of the townships of Raphoe, Donegal and Mountjoy, being the third district, shall hold their elections at the house of Michael Nicholas, at the Cross roads, in Donegal township; and the freemen of the townships of Carnarvan, Brecknock, Earl, Leacock and Salsbury, being the fourth district, shall hold their elections at the house of Thomas Henderson, in New-Holland.

SECT. XI. *And be it further enacted by the authority aforesaid,* of York; That the freemen of the township of Paradise, in the county of York, shall hold their election at the court-house in the town of York, in the said county.

SECT. XII. *And be it further enacted by the authority aforesaid,* of Cumberland; That the townships of Newtown, Hopewell and Shippensburg, in the county of Cumberland, shall be the fifth district, and the freemen of the said townships shall hold their annual election at the public school-house, in the town of Shippensburg.

SECT. XIII. *And be it further enacted by the authority aforesaid,* of Bedford; That the freemen of the second district in the county of Bedford shall henceforth meet and hold their annual election at the house of William Kerney, in said district; and that the freemen of the townships of Franks-town and Morrison's Cove shall be henceforth the sixth district in the said county, and shall meet and hold their annual elections at the house of Lazarus Lowrey, at Frank's-town; any law or custom to the contrary notwithstanding.

SECT. XIV. *And be it further enacted by the authority aforesaid,* of Northumberland; That the freemen of Potter's township, in the county of Northumberland, shall henceforth hold their annual elections at the house of George M'Cornick, in Penn's Valley, in Potter's township, and be called the fifth district of the county aforesaid.

SECT. XV. And whereas the commissioners, who were appointed to ascertain and fix the proper place for holding the courts of justice in and for the county of Westmoreland, have fixed that the same courts be hereafter holden at Greensburg, otherwise Newtown: *Be it therefore enacted by the authority aforesaid,* That Greensburg shall hereafter be the place of election of the fifth district of Westmoreland county, and that at all future elections for the same county, the electors residing within the same district shall attend and vote at the court-house in Greensburg aforesaid; and that the returns to be made of inspectors elect be made at the said court-house in Greensburg, and not at Hanna's-town, the act of Assembly for regulating general elections notwithstanding: *Provided nevertheless,* That as the said electors may not be duly informed of this alteration of the place for holding the next ensuing election, the same be holden at Hanna's-town, as heretofore.

SECT. XVII. *And be it further enacted by the authority aforesaid,* Election districts in Dauphin. That the freemen of the fourth district of the county of Dauphin shall henceforth meet and hold their annual election at Kleine's-mill, in said district; and that the freemen of East-Hanover and Bethel townships, being part of the first district in said county, shall hold

1786. their annual election at the house of Matthias Henings, in Williamsburg, in Bethel township, being the fifth district.

passed 19th September, 1786.—Recorded in Law Book No. III. page 117. (r)

(r) The first six sections of this act section was temporary, and is obsolete. See the act of 15th February, 1799, repealing the general elections. The 16th (chap. 2009.)

CHAPTER MCCXXXIII.

An ACT for erecting the northern part of the county of Northumberland into a separate county.

SECT. I. WHEREAS many of the inhabitants of the northern part of the county of Northumberland have, by their petition to the General Assembly of this state, represented the inconveniences which they are subject to, by the large extent of the said county of Northumberland, and the great distance at which the said petitioners dwell from the county town, where the courts of justice and the public offices of the same county are held and kept: For remedy whereof,

SECT. II. *Be it enacted, and it is hereby enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same, That all and singular the lands lying within that part of the county of Northumberland, which lie within the bounds and limits hereafter described, shall be erected into a separate county; that is to say, beginning at the mouth of Nescopeck creek, and running along the south bank thereof eastward to the head of said creek; from thence a due east course to the head branch of Lehigh creek; then along the east bank of said Lehigh creek to the head thereof; from thence a due north course to the northern boundary of the state; thence westward along the said boundary till it crosses the east branch of Susquehanna; and then along the said northern boundary fifteen miles west of the said river Susquehanna; thence by a straight line to the head of Tawandee creek; thence along the ridge which divides the waters of the east branch of the Susquehanna from those of the west branch, to a point due west from the mouth of Nescopeck creek; thence east to the place of beginning; which shall from henceforth be known and called by the name of Luzerne county.*

SECT. III. *And be it further enacted by the authority aforesaid, That the inhabitants of the said county of Luzerne shall, at all times hereafter, enjoy all and singular the jurisdictions, powers, rights, liberties and privileges, whatsoever, which the inhabitants of any other county of this state do, may, or ought to enjoy, by the constitution and laws of the said state.*

SECT. IV. *And be it further enacted by the authority aforesaid, That courts of Common Pleas and General Quarter Sessions of the Peace, to be holden in and for the said county of Luzerne, shall be opened and held [on the Tuesday succeeding the Tuesday, on which the court of Northumberland is held, in each and every term hereafter; and that the court of Quarter Sessions shall sit three days at each sessions, and no longer,] and shall be held at the house of Zebulon Butler, in the town of Wilkesburg, in the said county of*

The county of Luzerne erected.

Its boundaries.

Rights and privileges of the new county.

The courts, where and when to be held.

[Altered see the note.]

Luzerne, until a court-house shall be built, as hereafter directed, in the said county, which said courts shall then be holden and kept at the said court-house, on the days and times before mentioned. 1786.

SECT. VII. *And be it further enacted by the authority aforesaid,* That the Sheriff, Treasurers, Prothonotaries, Collectors of excise, and all such officers as have heretofore usually given surety for the faithful discharge of their respective offices, who shall hereafter be appointed or elected in the said county of **Luzerne**, before they, or any of them, shall enter upon the execution of their respective offices, shall give sufficient security, in the same sums, in the same manner and form, and for the same uses, trusts and purposes, as such officers for the time being are obliged by law to do in the county of **Northumberland**. County officers shall give the usual security.

SECT. IX. *And be it further enacted by the authority aforesaid,* That **Zebulon Butler, Nathaniel Landen, Jonah Rogers, John Philips, and Simon Spawlding**, are hereby appointed trustees for the said county of **Luzerne**, and they, or any three of them, shall take assurances of and for a piece of land, situated in some convenient place in or near [**Wilkesburg**,] within the said county of **Luzerne**, for the seat of a court-house, and of a county gaol or prison, for the said county, in the name of the commonwealth, in trust and for the use and benefit of the said county of **Luzerne**, and thereupon to erect a court-house and prison, sufficient to accommodate the public service of the said county. Trustees appointed to purchase a seat for a court-house and prison.

SECT. XI. *And be it further enacted by the authority aforesaid,* That the Justices of the Supreme Court of this state shall have the like powers, jurisdictions and authorities, within the said county of **Luzerne**, as by law they are vested with and entitled to in the other counties of this state, and they are hereby authorized and empowered, from time to time, to deliver the gaol of the said county of capital and other offenders, in like manner as they are authorized to do in other counties of this state. Jurisdiction of the Supreme Court in Luzerne.

Passed 25th September, 1786 — Recorded in Law Book No. III. page 147. (s)

(s) The sections omitted in this act were temporary, or are altered by the existing constitution, and are obsolete. 1312)

§ 5. Respected the election of justices of the peace in certain districts.

§ 6 Provided for the continuance of the process commenced in **Northumberland** county.

§ 8. Related merely to the first general election in the new county.

§ 9. Respected the raising money for erecting the public buildings.

By the 9th section of an act passed 27th of December, 1786, (chap. 1245,) it is enacted that, the line from the mouth of **Necocheck**, shall be run north-westwardly, until it intersects the line which divides the waters of the east branch of **Susquehanna** river, from those of the west branch thereof.

By the 4th section of an act passed 29th of September, 1787, it is declared, that this latter line shall run north one degree west until it intersects the line which divides the waters of the east

branch of **Susquehanna** river from those of the west branch thereof, (chap. 1312)

Commissioners appointed to ascertain and run certain lines between **Berks, Northumberland, Northampton** and **Luzerne**, to be thereafter deemed the boundary line between them, act of 17th of April, 1795, (chap. 1837.)

Commissioners appointed to run the boundary line between **Northumberland, Lycoming** and **Luzerne**, by act of 23d of February, 1801, (chap. 2182.)

By act of 2d of April, 1804, (chap. 2494,) that part of **Luzerne** county, which lies west of the following lines, to wit, beginning at the east side of the east branch of **Susquehanna**, on the line between **Pennsylvania** and **New-York**, at such place, that from thence a due south line will strike the northeastern corner of **Clavarak** township; thence by the line of the same township, about a southwest course, crossing the said east branch to the northwest corner of

1786. said township; thence by the southwest side of the same, to the southwest corner thereof, and from thence by a due west line to the line now separating the counties, of Luzerne and Lycoming, was annexed to *Lycoming county*.

Part of *Northumberland* annexed to *Luzerne*, 28th of March, 1808, (chap. 2976.)

By an act passed 31st of February, 1810, parts of *Luzerne* and *Lycoming* counties were erected into separate county districts, viz. *Ontario* and *Susquehanna*; but they are not yet organized.

The act of 29th of September, 1787, authorized the sheriff and justices of the peace to confine prisoners in the gaol of *Northampton* county, &c. But see the general index for much other matter relating to this tract of country under the titles, "*W.oming*," "*Invasion*," "*Connecticut Titles*," "*Pennsylvania Claimants*," "*Meade David*," "*Luzerne*."

By the 4th section of an act passed 4th of April, 1805, (chap. 2612,) it is made the duty of the recorder of deeds of *Luzerne* county to receive certain books and documents commonly called the "*Westmoreland* records," and keep the same in his office; and on application and payment of the usual fees, shall make out and deliver copies therefrom, under seal of office, and when, and so often as he thereto shall be requested, which copies so made out and delivered shall be as good evidence in law, as the original might or could be.

By the last enumeration the county of *Luzerne* was found to contain two thousand seven hundred and thirty taxables, and united with the county of *Northumberland*, eight thousand seven hundred and ninety-one taxables; and by the act of 21st of March, 1808, (chap. 2931,) apportioning the representation in pursuance thereof, sends two members to the house of representatives, and in conjunction with the county of *Northumberland*, two members to the senate.

By act passed 7th of Sept'r, 1789, (chap. 1418,) the county of *Luzerne* was divided into five election districts.

W. alusing district established by act of 29th of March, 1792, (chap. 1603.)

Lackawanna district established by act of 25th of February, 1795, (chap. 1786.)

A new district erected at the north line of the state, by act of 4th of April, 1798, (chap. 1994, § 11.)

Another district established by act of 10th of April, 1799, (chap. 2064.)

Three new districts, called *Hantington*, *Brantrum* and *Rindaw* districts, established by act of 1st of December, 1800, (chap. 2139.)

The place of holding elections in *W. alusing* district altered by act of 17th of March, 1803, (chap. 2246.)

Part of *Pitt's* town district, erected into a new district, 4th of April, 1805, (chap. 2599, § 16.)

Nicholson's district erected by act of 31st of March, 1806, (chap. 2715, § 13.) and the place of holding the elections in *Tunkhannock* district, altered by the same act, § 14.

Orwell township erected into a separate district, and *Clifford* township erected into a separate district by act of 11th of April, 1807, (chap. 2856, § 26, 27.)

Harford, *Abington*, *Bridgewater*, *W. yson*, and that part of *Nescopeck*, added to *Luzerne* county, erected into five separate districts by act of 28th of March, 1808, (chap. 2972, § 3, 5, 7, 36, 39,) and the place of holding elections in *Wilmington* district, changed, i. b. § 13.

Place of holding elections in *Kingston* district changed by act of 4th of April, 1809.

Canton and *Newport* townships erected into two separate districts, by act of 20th of March, 1810.

By the Judiciary act of 24th of February 1806. *Northumberland*, *Lycoming* and *Luzerne* form the 8th Judiciary district. The courts in *Luzerne* are held on the first Mondays in January, April, August and November. The term continues two weeks.

Luzerne county is part of the middle district of the supreme court.

CHAPTER MCCXXXIV.

An ACT to distribute and annex the jurisdiction of this commonwealth upon the river Delaware, below the Station point, and to certain islands within the same, to the counties of Northampton, Bucks, Philadelphia and Chester.

SECT. 1. WHEREAS, in and by an act of General Assembly of this state, entitled "An Act to ratify and confirm an agreement, made between commissioners appointed by the legislature of the state of New-Jersey and commissioners appointed by the legis-

[Ante, chap. 1024.]

lature of the state of Pennsylvania, for the purpose of settling the jurisdiction of the river Delaware, and islands within the same," 1786. which act was published on the twentieth day of September, *Anno Domini* one thousand seven hundred and eighty-three, an agreement between the state of Pennsylvania of the one part, and the state of New-Jersey of the other part, made and concluded by commissioners acting in behalf of the said states respectively, whereby *inter alia*, it was agreed and established, that all islands, islets and dry lands, within the bed and between the shores of the said river, and between the Station point, northerly, and the Falls of Trenton, southerly, &c. was ratified and confirmed, whereby certain islands, therein enumerated and described, were to be deemed and considered as parts and parcels of Pennsylvania: And whereas George Wall, John Okely, and Jonas Hartzel, commissioners on the part of the state of Pennsylvania, and Moore Furman, Esquire, commissioner on the part of the state of New-Jersey, who have been since appointed to distinguish the several islands within the bed of the same river, between the Station point, northerly, and the Falls of Trenton, and to declare which of the same islands, on the principle aforesaid, belong to each of the said states respectively, have caused an actual survey to be made of the said river, from the said Station point, northerly, to the Falls aforesaid, and have reported and returned a draught of the same river and islands to the President in Council, whereby it appears that the following islands within the said river, and northerly of the Falls of Trenton, belong to and are part of this state; that is to say, opposite to the county of Bucks and townships hereafter named; opposite to the Falls township, Bird's island; opposite Lower Makefield township, Slack's three islands, Dun's island, and Harvey's lower island; opposite to Upper-Makefield township, Harvey's upper island, and Lownes's island; opposite to Solebury township, Smith's island and bar, and Paxton's island and bar; opposite to Tinnicum township, Prall's two islands, Wall's island, Resolution island, Marshall's island; Wall's two islands, Fishing island, and Pennington's island; opposite to Nockamixon township, Laughly's island; and opposite to the county of Northampton, and the townships hereafter named, that is to say, opposite to Williams township, Pohatcung island, Shoemaker's island, and Loor's island; opposite to the Forks township, Easton island; opposite to Mount Bethel, Mason's island and bar, Mason's island, Foul Rift island, M Ilhenny's island, and Attin's two islands; opposite to Lower Smithfield, Handie's island and bar, Goodwin's two islands, Shawanaugh's island and bar, Vancampen's island, Nicholas Depui's island, and two bars, Chambers' island, and Vanoken's island; opposite to Delaware township, Swartwood's island, and Isaac Vancampen's island; opposite to Upper Smithfield township, Punkey's island and five bars.

SECT. II. *Be it therefore enacted, and it is hereby enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same,* That the following islands, viz. opposite the county of Bucks, and townships hereafter named; opposite to the Falls township, Bird's island; opposite Lower-Makefield township, Slack's three islands, Dun's island and Harvey's lower island; opposite to Upper-Make-

Jurisdiction of the islands in the Delaware, northerly of the Falls of Trenton, assigned.

1786. field township, Harvey's upper island and Lownes's island; opposite to Solebury township, Smith's island and bar, and Paxton's island and bar; opposite to Tinnicum township, Prall's two islands, Wall's island, Resolution island, Marshall's island, Wall's two islands, Fishing island, and Pennington's island; opposite to Nockanixon township, Laughly's island; and opposite the county of Northampton, and the townships hereafter named, that is to say, opposite to William's township, Pohatcong island, Shoemaker's island, and Loor's island; opposite to the Forks township, Easton island; opposite to Mount Bethel, Mason's island and bar, Mason's island, Foul Rift island, McIlhenney's island, and Attin's two islands; opposite to Lower-Smithfield, Handie's island and bar, Goodwin's two islands, Shawanaugh's island and bar, Vancampen's island, Nicholas Depui's two islands and bars, Chambers's island, and Vanoken's island; opposite to Delaware township, Swartwood's island and Isaac Vancampen's island; opposite to Upper-Smithfield township, Punkey's island and five bars; lying and being within the bed of the river Delaware, and between the shores of the same river, and northerly of the Falls of Trenton, so ascertained and distinguished by the commissioners, last mentioned, as parts and parcels of this state, shall be for ever henceforth deemed, adjudged and established, to belong to this state, and shall be subject to the jurisdiction thereof, as of the bodies of the counties and townships or precincts of the same, to which the said islands, together with all other dry land within the bed of the same river, belonging to this state, are by this act, or by virtue of this act shall be annexed. And to the end that justice may be done, in cases civil as well as criminal, and against persons offending upon the said river, or upon any island or dry land within the same, and belonging to this commonwealth:

SECT. III. *Be it enacted by the authority aforesaid,* That the bed of the same river, and the islands and dry land within the same, so as at resaid assigned to and belonging to this state, lying and being northerly of a north-easterly line from the extremity of the boundary line between the counties of Bucks and Northampton, at the bank of the river Delaware, to be extended across the said river unto the shore of New-Jersey, shall be deemed to be, and shall be henceforth, parts of the county of Northampton, and of the several adjoining townships and precincts of the same county, lying along the said river; and that the bed of the same river, and the islands and dry land within the same, so as aforesaid assigned and belonging to this state, lying southerly of the line last aforesaid across the said river, and northerly of a line from the extremity of the boundary of the counties of Bucks and Philadelphia, at the bank of the river Delaware, across the said river, by a south-east course, to the shore of the state of New-Jersey, are annexed to and shall be deemed to be, and shall henceforth be, parts of the county of Bucks, and of the several adjoining townships and precincts of the same county, lying along the said river.

SECT. IV. And that the bed of the same river, and the islands and dry lands lying within the same, so as aforesaid assigned to this state, lying and being northerly of a line from the extremity of the boundary line of the counties of Philadelphia and Chester, at the

The bed of the river and the islands and dry land therein, within the respective boundaries described in the act, are deemed part of Northampton; part of Bucks.

Part of Philadelphia;

bank of the river Delaware, to be extended across the same river, by a south south-east course, to the shore of the state of New-Jersey, are annexed to and shall be deemed to be, and shall henceforth be, parts of the county of Philadelphia, and of the several adjoining townships and precincts of the same county, lying along the said river. 1786.

SECT. V. And that the residue of the bed of the same river, and the islands and dry land within the same, so as aforesaid assigned to this state, and being south-westerly of the line herein last before described, are annexed to and shall be deemed to be, and henceforth shall be, parts of the county of Chester, and of the several adjoining townships and precincts within the same county. and part of Chester.

SECT. VI. *Provided nevertheless*, That the whole of Hogg-island, which lies opposite to the said boundary of Philadelphia and Chester counties, and of the marshes surrounding the said island, is hereby annexed to and shall be deemed to be part of the county of Chester, and of the nearest township of the same county. Hogg-island annexed to Chester.

SECT. VII. *And be it further enacted by the authority aforesaid*, That the jurisdiction of this commonwealth, and of the respective counties to which the bed of the same river, and the islands and dry land within the same, is by this act annexed as aforesaid, as far as the same shall be consistent with the agreement herein before recited, made between the states of Pennsylvania and New-Jersey, shall be full and complete; and all writs and warrants, and process, duly issued within the said counties respectively, shall have force and operation, and may be executed within the river, islands and dry land, as parts of the same counties, by the proper Sheriffs and other officers of the same counties. And if any difficulty arise concerning the townships, to which the said islands or other dry land within the said river belongs, the same shall be adjusted by the Justices of the peace of the proper county at their General Quarter Sessions, and they shall determine the same, so as that no island in the said river be divided between two townships or precincts, but the same shall be annexed to the township which would, by dividing the same, be entitled to the major part of such island. Jurisdiction of the state over the said river and islands: process may be thereon executed; and difficulties respecting the jurisdiction to be adjusted at the Quarter Sessions.

SECT. VIII. *And be it further enacted by the authority aforesaid*, That the President in Council shall direct the respective commissioners of the several counties aforesaid, to have the lines aforesaid across the Delaware ascertained and fixed by lasting marks on the shore of the river Delaware, at the charge of the adjoining counties. The lines across the Delaware to be fixed.

Passed 25th September, 1786—Recorded in Law Book No. III. page 100.

CHAPTER MCCXXXV.

An ACT for the more speedy and effectual administration of Justice.

SECT. I. WHEREAS the practice of commencing all civil suits and actions in the county Court of Common Pleas hath been found productive of great delay and expense, in the administration of justice, especially within the city and county of Philadelphia, wherein the number of suits has of late years greatly increased: For remedy whereof, [For the present of the and Jurisdiction of the Supreme Court. See the note to Chap. 255, Vol. 1, page, 145.]

1786.

Terms to be
holden in the
Supreme
Court.

SECT. II. *Be it enacted, and it is hereby enacted, by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same,* That from and after the first day of January, which shall be in the year of our Lord one thousand seven hundred and eighty-seven, the Supreme Court shall be holden at Philadelphia four times in every year, that is to say, on the second day of January, April, July, and on the twenty-fourth day of September, unless any of the said days should happen to be on the Lord's day, commonly called Sunday, in which case the said court shall be holden on the day following.

Duration of
the terms
respectively.

SECT. III. *And be it further enacted by the authority aforesaid,* That none of the said terms shall continue longer than fourteen days from the beginning thereof, except the term of January, which shall continue for the space of twenty-one days, if necessary, and no longer.]

The Su-
preme
Court to
have ori-
ginal juris-
diction in
Philadel-
phia.

SECT. IV. *And be it further enacted by the authority aforesaid,* That the Justices of the said Supreme Court shall have original jurisdiction and cognizance of all manner of suits, causes and actions, within the city and county of Philadelphia, and shall have full power and authority to issue, under the seal of the said court, writs of *capias ad respondendum*, writs of summons, *scire facias*, attachment, partition, dower, and all other writs and process in and upon the said suits, pleas and actions, directed to the Sheriff (or Coroner, as the case may require) of the said county, and returnable before the said Justices on the first day of the next term.

Provided no
suit shall be
commenced
for a cause
arising be-
fore this act
except suits
of the com-
monwealth,
and on titles
to land; and
if not more
than £. 50
recoverd,
plaintiff shall
pay costs.
The court
may estab-
lish rules.

SECT. V. *Provided always,* That no suit or action shall be commenced in the said Supreme Court for any debt or cause which arose before the passing of this act, except suits of the commonwealth, and such wherein the title of land or other real estate may come in question: and if any plaintiff shall bring or commence any suit or action in the said court, and shall not recover thereupon more than fifty pounds, such plaintiff shall not be allowed any costs of suit.

SECT. VI. *And be it hereby declared and enacted,* That the Justices of the said Supreme Court have full power and authority, and they are hereby directed to make and establish such rules for regulating the practice of the said court, and expediting the determination of suits, as they in their discretion shall judge necessary.

Of removal
of suits from
the Common
Pleas.

SECT. VII. *And be it further enacted by the authority aforesaid,* That, from and after the said first day of January next, no plea, suit or action, brought after the passing of this act, and depending in the county court of Common Pleas in the county of Philadelphia, shall be removed into the said Supreme Court by any writ of *certiorari*, issued on the part of any plaintiff in the said court of Common Pleas, nor shall any such action or plea be removed, as also said, by any writ of *habeas corpus* or *certiorari*, after the same shall have been at issue two terms or more: And in case any such writ shall be presented by any plaintiff, in the said court of Common Pleas, to the Justices thereof, after the day aforesaid, or shall be so presented by any defendant, after the cause hath been at issue two terms or more, the said Justices shall, nevertheless, proceed to hear and determine the said plea or action before them depending.

[This section
explained
by act of
25th of Feb-
ruary, 1787,
post chap.
1252.]

SECT. VIII. *And be it further enacted by the authority aforesaid,* 1786.

That the prothonotary of the said Supreme Court, and such other discreet persons as the Justices of the same court shall, from time to time, nominate and appoint, shall be, within the counties where they respectively reside, commissioners of bail, and they are hereby severally empowered to take and receive recognizances of bail, in any suit or action in the same court depending, in the same manner and form as the Judges of the said court may or do take the same, and for the same fee as formerly allowed by law.

Commissioners of bail to be appointed. [See chap. 1564, sect. 12.]

[SECT. IX. *And be it further enacted by the authority aforesaid,* That the prothonotary of the said Supreme Court shall pay into the hands of the Treasurer of the state, for the support of government, the sum of seven shillings and six-pence upon every writ of *capias ad respondendum*, summons or other writ, whereby any suit or action shall be commenced in the said court, by virtue of this act.]

Additional tax on suits in Supreme Court [supplied.]

[SECT. X. And whereas the difficulty and importance of the questions that frequently arise in the said court of Common Pleas for the county of Philadelphia, render it necessary that a person of legal knowledge and abilities should constantly preside in the said court:]

[Sect. 10, 11, 12, supplied by the existing constitution.]

[SECT. XI. And whereas the principles of justice, and the directions of the constitution, require that a compensation be provided, in some measure adequate to the services, which shall be rendered to the public by the said President:]

[SECT. XII. *Be it therefore enacted by the authority aforesaid,* That, from and after the passing this act, there shall be paid for every writ issued out of the said court (writs of *subpoena*, *venire facias*, and writs at the suit of the commonwealth, excepted) by the person suing out the same, the sum of one shilling, over and besides the usual and customary fees; and that from and after the first day of January aforesaid, the like sum shall be paid by the plaintiff for every rule of reference, which shall be made and entered into, in any action in the same court depending, which sums shall be received by the Prothonotary, and by him accounted for and paid, quarterly, to the president of the said court.]

Tax on writs and rules of reference, for compensating the services of the President of Philadelphia Common Pleas.

Passed 25th September, 1786.—Recorded in Law Book No. III. page 132.

CHAPTER MCCXXXIX.

An ACT to incorporate the Presbyterian church of Silver Spring, in the county of Cumberland.

Passed 25th September, 1786.—Private Act—Recorded in Law Book No. III. page 155.

A C T S

OF THE

General Assembly of Pennsylvania.

Passed during three Sessions—the first whereof commenced 23d of October, and ended 30th of December, 1786—the second on the 20th of February, and ended on the 29th day March, 1787.—and the third on the 4th day of September, and ended on the 29th day of September, 1787. Being the eleventh General Assembly of the commonwealth.

1786.

THOMAS MIFFLIN, SPEAKER

CHAPTER MCCXLV.

[Original act
ant. page 386,
chap. 1233.]

A SUPPLEMENT to an Act, passed the twenty-fifth day of September last, entitled “An Act for erecting the northern part of the county of Northumberland into a separate county.” (t)

Boundary
line between
Northum-
berland and
Luzerne.

SECT. IX. AND whereas, by the said act, that part of the line which divides the counties of Northumberland and Luzerne (as described by the second section of said act) which is to be run from the head of Tawandee creek, thence along the ridge that divides the waters of the east branch of Susquehanna river from those of the west branch, will run nearly a west course, therefore a line to be run from the mouth of Nescopeck due west will not be likely to make the necessary division: For remedy whereof, *Be it enacted by the authority aforesaid,* That the line from the mouth of Nescopeck shall be run northwestwardly, until it intersects the line which divides the waters of the east branch of Susquehanna river from those of the west branch thereof.

Passed 27th December, 1786—Recorded in Law Book, No. III. page 161.

(t) The sections that are omitted in this republication relate merely to the first elections, to be held in Luzerne county, for a representative in the legislature, justices of the peace, &c. (*Note to former edition.*)

CHAPTER MCCXLVIII.

1786.

An ACT for giving, during a limited time, a right of pre-emption to the actual settlers within that part of this state, which is within the territory purchased by the King of Great-Britain, of or from the Indians, at fort Stanwix, in the year of our Lord one thousand seven hundred and sixty-eight.

SECT. I. WHEREAS, by the act of General Assembly of this commonwealth, passed on the first day of April, in the year of our Lord one thousand seven hundred and eighty-four, entitled "An act for opening the Land-Office, for granting and disposing of the unappropriated lands within this state," no reservation was made, or right of pre-emption given to settlers on the lands purchased of the Indians, at a treaty held at Fort Stanwix, in the year of our Lord one thousand seven hundred and sixty-eight, but it was left in the power of all persons whatever to make application, and take out warrants for those lands :

[See the notes to chap. 1083, ante. page 102.]

And whereas many of the settlers on the said lands have been driven from their habitations in the course of the war, or have remained therein, and during the said time, with much suffering and at great risques, have formed a barrier to the country :

And whereas, by reason of the war and other causes, it is difficult for such settlers to pay the purchase money, and take out warrants for the said lands immediately; it is therefore just and reasonable, that a right of pre-emption, for a limited time, be given to them, and that they may take out warrants for the lands which they have possessed and improved at so great peril :

SECT. II. *Be it therefore enacted, and it is hereby enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same,* That no warrant shall issue from the Land-Office of this state, for any tract of land on which a settlement is made, unless to such person or persons, respectively, who have made the settlement, or their legal representatives, [until the tenth day of April, which shall be in the year of our Lord one thousand seven hundred and eighty-eight,] and if any such warrant shall issue otherwise than aforesaid, it shall be deemed to have issued by surprise, and shall be of no avail in law.

Warrant not to issue for settled lands, unless to the settlers, before the 10th of April, 1780. [Since extended.]

SECT. III. *Provided always,* That by a settlement shall be understood, an actual personal resident settlement, with a manifest intention of making it a place of abode, and the means of supporting a family, and continued from time to time, unless interrupted by the enemy, or by going into the military service of this country during the war.

What shall be deemed a settlement,

SECT. IV. *Provided always,* That this act shall extend only to that part of this state which is within the territory purchased of or from the Indians, by the King of Great Britain, at Fort Stanwix, in the year of our Lord one thousand seven hundred and sixty-eight, and that no such settler shall or may have the pre-emption of any tract, exceeding four hundred acres, by reason of any such settlement.

This act to extend only to the lands purchased in 1768, at Fort Stanwix.

CHAPTER MCCL.

1787.

An ACT containing a supplement to the acts made for the relief of insolvent debtors, and also granting relief to felons unable to make restitution of stolen goods.

[See vol. 1, pa. 1-1, chap. 315, and the notes thereon subjoined.]

SECT. I. WHEREAS it is proper that the laws for the relief of insolvent debtors should be extended, in order to make them correspond with the words and spirit of the twenty-eighth section of the constitution of this state: And whereas the confinement of persons who have been convicted of crimes against the commonwealth, until they make restitution for the goods stolen, or pay the value thereof has been found oppressive to such convicts, and expensive to the state, without answering the good purposes intended thereby: Therefore,

SECT. II. *Be it enacted, and it is hereby enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same,* That from and after the passing of this act, all and every person or persons who is, are, or shall be, held in confinement, by order or judgment of any court of this state, committing him, her, or them, until he, she or they restore to the owner or owners any stolen goods, chattels or effects, or pay to the owner or owners the value thereof, or until he, she or they pay to such owner or owners the sum or sums of money allowed by the court, for the loss of time, charges and disbursements of such owner or owners, in the apprehending and prosecuting of such offender or offenders, shall and may be discharged from personal imprisonment by the court, which shall have committed such offender or offenders as aforesaid, so far as regards confinement for such causes, if such court shall, on consideration of the situation and circumstances of such offender or offenders, find, that he, she or they cannot make such restitution or payment: *Provided always,* That no such discharge shall be made, unless reasonable previous notice be given by the offender or offenders to the owner or owners aforesaid, respectively, his, her or their agent or attorney in fact, if such owner or owners be in this state at the time, or on proof of due diligence to find such owner or owners, his, her or their agent or attorney in fact, and that such owner or owners, agent or attorney, cannot be found.

SECT. III. *And be it further enacted by the authority aforesaid,* That every debtor who is, or who shall be, charged in execution for rent, shall be entitled to the benefit of the acts heretofore made for the relief of insolvent debtors, (except such acts as are made for particular debtors by name,) in like manner as those debtors who are charged in execution for other debts.

SECT. IV. *Provided always,* That nothing herein contained shall deprive any landlord or landlords of the benefit of the act, entitled "An act for the relief of insolvent debtors within the province (now state) of Pennsylvania," so far as regards any remedy, by distress of goods or chattels actually distrained, or liable to distress, and so that such landlord or landlords do not arrest, or in any way confine, the body of the insolvent debtor, in the course of such remedy.

Persons committed till the restoration of stolen goods or payment of the value, &c. may be discharged as insolvent debtors, by the proper court.

Reasonable notice to be given to the owner, or his attorney.

Debtors in execution for rent may be discharged as insolvent debtors.

But this not to affect the landlord's remedy by distress.

SECT. V. *And be it further enacted by the authority aforesaid, 1787.* That it shall not be lawful for any court to remand to gaol any debtor or person entitled to the benefit of this act, or the acts heretofore made for the relief of insolvent debtors, although the creditor or creditors shall desire the same to be done, and offer to comply with the security, weekly payments, and other requisites provided by the laws of this commonwealth, for such purpose made and now in force, except in case of a strong presumption of fraud committed by the insolvent person or persons applying, and required by his, her or their creditor or creditors to be remanded.

No insolvent debtor to be remanded on a weekly allowance.
Except there is a strong presumption of fraud.

SECT. VI. *And be it further enacted by the authority aforesaid,* That so much of the acts made for the relief of insolvent debtors, as is hereby altered or supplied, be, and the same is hereby repealed.

Repealing clause.

Passed 28th February, 1787.—Recorded in Law Book, No. III. pa. 165

CHAPTER MCCLII.

A SUPPLEMENT to the act, entitled “An act for the more speedy and effectual administration of justice.”

SECT. I. **WHEREAS** doubts have arisen respecting the construction of the seventh section of the act, entitled “An act for the more speedy and effectual administration of justice:” For removing whereof,

[Ante. chap. 1235, p. 391.]

SECT. II. *Be it enacted, and it is hereby enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same,* That nothing in the said act shall be taken or construed to prevent any plaintiff or plaintiffs from removing into the Supreme Court, by writ of *certiorari*, any suit or action, which, by virtue of the said act, cannot be originally commenced in the said Supreme Court, but that every such plaintiff or plaintiffs shall be at liberty to remove into the said court any such suit or action, as they might or could have done, before the passing of the said act.

Plaintiffs may, as formerly, remove into the Supreme Court, causes which could not be originally brought there.

Passed 28th February, 1787.—Recorded in Law Book No. III. page 167.

CHAPTER MCCLIII.

An ACT for the establishment of an academy, or public school, in the town of Pittsburgh. (u)

Passed 28th February, 1787.—Private Act.—Recorded in Law Book No. III. page 167.

(u) By an act of the 10th of Sept'r, made to the trustees of the Pittsburgh 1787, a grant of 5000 acres of land was academy. (Note to former edition.)

CHAPTER MCCLV.

An act for incorporating the German Lutheran congregation in and near the borough of Lancaster, in the state of Pennsylvania.

Passed 5th March, 1787.—Private act.—Recorded in Law Book No. III. pa. 169.

1787.

CHAPTER MCCLVII.

An ACT to incorporate the congregation of Seventh Day Baptists, residing within the township of East-Nantmill, and places adjacent, in the county of Chester.

Passed 5th of March, 1787.—Private Act.—Recorded in Law Book No. III. page 173.

CHAPTER MCCLXI.

An ACT to incorporate the Presbyterian congregation of the township of Leacock, in the county of Lancaster.

Passed 10th March, 1787.—Private Act.—Recorded in Law Book No. III. pa. 180.

CHAPTER MCCLXII.

An ACT for incorporating the United Episcopal churches of Trinity church in Oxford township, and All Saints church in Lower Dublin township, in Philadelphia county, and Saint Thomas's church in Whitemarsh township, in Montgomery county.

Passed 10th March, 1787.—Private Act.—Recorded in Law Book No. III. pa. 181.

CHAPTER MCCLXIII.

An ACT to incorporate and endow the German college and charity school in the borough and county of Lancaster, in this state.

[A COLLEGE established in the borough of Lancaster, to be called "FRANKLIN COLLEGE," the first trustees named, and incorporated, with the usual corporate powers. Yearly income not to exceed £ 10,000. The annual meeting of the trustees to be at Lancaster, nine of them to be a *quorum*; to appoint their own officers. The principal, vice-principal, or professors, while they remain such, not to hold the office of trustee. The style and powers of the faculty prescribed. Proportion of trustees, how to be chosen, principal to be chosen alternately from the Lutheran, or Calvinist churches, unless &c. Seat of a trustee, being a clergyman, to be filled with another clergyman, but the proportion of Lutheran and Calvinist trustees, to be invariably preserved. Trustees empowered to appoint other officers, not named in this charter, to fix salaries &c.

Misnomer not to defeat any gift &c. nor non user to create a forfeiture &c.

§ 3. The constitution of the college not to be altered but by the legislature.

§ 4. The college endowed with 10,000 acres of land, to be surveyed at the charge of the state &c.]

Passed 10th March, 1787.—Private Act.—Recorded in Law Book No. III. page 184. (x)

(x) By an act passed 27th of February, 1788, (chap. 1320,) the public store house and two lots of ground, in the borough of Lancaster, were vested in the trustees of *Franklin college*, for the use of the said institution.

CHAPTER MCCLXVII.

1787.

An ACT to revive the incorporation of the subscribers to the Bank of North America.

SECT. I. WHEREAS, by an act of General Assembly of this commonwealth, passed the first day of April, in the year of our Lord one thousand seven hundred and eighty-two, entitled "An act to incorporate the subscribers to the Bank of North-America," it was enacted, that those who then were, and those who should become subscribers to the said bank, should be, for ever thereafter, a corporation and body politic, to all intents and purposes, by the name and style of "The President, Directors and Company of the Bank of North-America," with certain powers, rights and privileges, therein particularly expressed and granted : And whereas, by a certain other act of General Assembly, passed the thirteenth day of September, in the year of our Lord one thousand seven hundred and eighty-five, it was enacted, that every matter, clause and thing, in the said recited act contained, should be repealed, and made utterly void and of none effect : And whereas a bank, under proper regulations, may be rendered useful to the commerce and agriculture of the state, and it is just and proper, that the subscribers and stockholders of the said bank of North-America should have a charter of incorporation, under such limitations and restrictions, as not to become an object of jealousy or apprehension to the good people of this state :

SECT. II. *Be it therefore enacted, and it is hereby enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same,* That all those persons who now are subscribers, or vested with shares, as stockholders in the said Bank of North-America, and all those who shall hereafter become subscribers or stockholders in the said bank, shall be, for the term of fourteen years, from and after the passing of this act, a corporation and body politic, to all intents and purposes, by the name and style of "The President, Directors and company of the Bank of North-America." (y)

The subscribers to the Bank of North America incorporated for 14 years.

SECT. III. *And be it further enacted by the authority aforesaid,* That the said corporation is hereby declared and made able and capable, in law, to have, hold, purchase, receive, possess, enjoy and retain lands, rents, tenements, money, goods, chattels, and effects, of what kind, nature or quality whatsoever, to the amount of two millions of dollars, and no more ; and also to sell, grant, demise, alien, or dispose of the same lands, rents, tenements, hereditaments, money, goods, chattels and effects.

The extent and quality of the capital estate limited and defined.

SECT. IV. *Provided nevertheless,* That such lands and tenements, which the said corporation are hereby enabled to purchase and hold, shall only extend to such lot and lots of ground and convenient buildings and improvements thereon erected, or to be erected, which they may find necessary and proper for carrying on the business of the said bank, and shall actually occupy for that purpose,

Their power to hold lands confined to buildings for the use of the institution, and lands mortgaged for their debts.

(y) This act of incorporation was March, 1799, (chap. 2022.) (Note to continued for 14 years more, from the former edition.) 17th of March, 1801, by act of 29th of

1787. and to such lands and tenements which are, or may be, *bona fide*, mortgaged to them, as securities for their debts.

SECT. V. And to the intent that the citizens of this state may not be oppressed by the said corporation, by their monopolizing or engrossing any sort of goods, wares or merchandize, *Be it further enacted by the authority aforesaid*, That the said corporation shall not, at any time, during the continuance thereof, deal or trade, or permit or suffer any person or persons whatsoever, either in trust or for the benefit of the same, to deal or trade with any of the stock, monies or effects, of or any ways belonging to the said corporation, in the buying or selling of any goods, wares or merchandise whatsoever; and every person or persons who shall deal or trade, or by whose order or directions such dealing or trading shall be made, prosecuted or managed, shall forfeit, for every such dealing or trading, and every such order or directions, treble the value of the goods and merchandise so traded for, to such person or persons who shall sue for the same, by action of debt, bill, plaint or information, in any of the courts of record within this state, wherein no essoin, protection, or wager of law, shall be allowed, nor more than one imparlance: Provided, that nothing herein contained shall any wise be construed to hinder the said corporation from dealing in bills of exchange, or in buying or selling bullion, gold or silver, public funds, or in selling any goods, wares or merchandise whatsoever, which shall really, and *bona fide*, be left or deposited with the said corporation for money lent or advanced thereon, and which shall not be redeemed at the time agreed on, or within three months after, or from selling such goods as shall or may be the produce of lands purchased or mortgaged to the said corporation, according to the true intent and meaning of this act.

SECT. VI. *And be it further enacted by the authority aforesaid*, That the said corporation be and shall be able and capable in law, to sue and be sued, plead and be impleaded, answer and be answered unto, defend and be defended, in courts of record, or any other place whatsoever, and to do and execute all and singular other matters and things, that to the said corporation shall or may appertain to do.

SECT. VII. *And be it further enacted by the authority aforesaid*, That for the well governing of the said corporation, and the ordering of their affairs, they shall have such officers as they shall hereafter direct and appoint: *Provided nevertheless*, That twelve directors, one of whom shall be the President of the said corporation, be of the number of their officers.

SECT. VIII. *And be it further enacted by the authority aforesaid*, That Thomas Willing be the present President, and that the said Thomas Willing, and John Nixon, Thomas Fitzsimmons, John Maxwell Nesbitt, Henry Hill, Josiah Hewes, Richard Bache, John Ross, Samuel Powel, Andrew Caldwell, Mordecai Lewis, and Andrew Tybout, be the present directors of the said corporation, and shall continue so until another President and other directors shall be chosen, according to the laws and regulations of the said corporation.

The corporation restricted from trading.

Penalty for transgressing.

What articles are not included in the restriction.

Corporate capacity and powers of the institution.

Of the appointment of the officers of the corporation.

The present President and directors named.

SECT. IX. *And be it further enacted by the authority aforesaid,* 1787.
That the president and directors of the said corporation shall be capable of exercising such powers, for the well governing and ordering of the affairs of the said corporation, and of holding such occasional meetings for that purpose, as shall be described, fixed and determined, by the laws, regulations and ordinances of the said corporation.

Power of the President and directors, for governing the affairs of the corporation.

SECT. X. *And be it further enacted by the authority aforesaid,*
That the said corporation may make, ordain, establish and put in execution such laws, ordinances and regulations, as shall seem necessary and convenient for the government of the said corporation: *Provided always,* That nothing herein before contained shall be construed to authorize the said corporation to exercise any powers in this state, repugnant to the laws or constitution thereof.

Power of the corporation to make and execute by-laws.

SECT. XI. *And be it further enacted by the authority aforesaid,*
That the said corporation shall have full power and authority to make, have and use a common seal, with such devices and inscription as they shall think proper, and the same to break, alter and renew, at pleasure.

Seal of the corporation.

SECT. XII. *And be it further enacted by the authority aforesaid,*
That the president and directors of the said corporation shall deposit with the President or Vice-president in Council, duplicates of all and every the laws, regulations and ordinances, which shall or may from time to time be made, enacted or ordained by the said corporation, within ten days after the making, enacting or ordaining the said laws, regulations or ordinances, respectively.

Duplicates of the by laws to be deposited with the executive.

SECT. XIII. *And be it further enacted by the authority aforesaid,*
That if any president, director, or any officer or servant of the said President, director or company, being intrusted with any bill or note, or any bond, deed, money or other effects, belonging to the said President, directors and company, or having any bill or note, or any bond, deed, money or other effects, lodged or deposited with the said President, directors and company, or with such officer or servant, as an officer or servant of the said President, directors and company, shall secrete, embezzle, or run away with any such bill, note, bond, deed, money or other effects, or any part of them, every President, director, officer or servant, so offending, and being thereof convicted in due form of law, in any court of Oyer and Terminer and General-Goal delivery within this commonwealth, shall be deemed guilty of felony, and shall suffer as a felon, agreeably to the laws for the punishment of grand larceny.

Any officer of the corporation secreting, embezzling or running away with bank bills, &c. shall be deemed guilty of felony. Forgery of the notes, how punished. See act of 22d of April, 1794, (chap. 1766.)

SECT. XIV. *And be it further enacted by the authority aforesaid,*
That this act and every thing therein contained shall be taken and construed most favourably and beneficially for the said corporation.

The act to be construed favourably for the corporation.

• Passed 17th of March, 1787—Recorded in Law Book, No. III, page 196.

CHAPTER MCCLXVIII.

An ACT for securing the city of Philadelphia, and the neighbourhood thereof, from damage by gunpowder.

SECT. I. WHEREAS it appears that the act, entitled “An Act for the better securing the city of Philadelphia, and its liberties,

1787. from danger of gunpowder," is in several respects defective : Therefore, to remedy the defects thereof,

[Repealed in part, see note.]

No greater quantity of gunpowder than thirty weight to be kept in any other place than the magazine within the city, or two miles of it : Penalty.

Captains of vessels importing gunpowder into the port of Philadelphia shall give notice thereof, and deliver the gunpowder at the magazine :

Penalty.

The health officer to give information thereof to the captains, &c.

How gunpowder intended for exportation shall be shipped.

Penalty on persons grossing.

SECT. II. *Be it enacted, and it is hereby enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same,* That from and after the passing of this act, no person shall keep in any house, store, shop, cellar or other place, within the city of Philadelphia, nor the country adjacent, within two miles of the said city, [except in the public magazine, in the square to the south of Vine-street, between Sixth and Seventh-streets, of the said city,] any greater quantity of gunpowder, at one time, than thirty pounds weight thereof, under the penalty of forfeiture of the whole quantity so over and above stored or kept, together with the sum of twenty pounds for every such offence.

SECT. III. *And be it further enacted by the authority aforesaid,* That every captain or master of, or merchant owning, any ship or vessel, bringing therein into such part of the port of Philadelphia, as lies between the southern boundary of the district of Southwark and the north-eastern boundary of the township of the Northern-Liberties, any gunpowder for sale or other purpose, (other than such gunpowder as shall be specially licenced in that behalf by the Supreme Executive Council,) shall, within the space of forty-eight hours from the arrival and coming to anchor of the said ship or vessel within the limits aforesaid, and before such ship or vessel shall be brought to any wharf of the said port within the said limits, deliver, or cause to be delivered, all the gunpowder above thirty pounds weight, brought as aforesaid, at the said magazine, between the hours hereinafter prescribed ; under the penalty of forfeiting at and after the rate of twenty pounds for every cask of gunpowder so withheld, and not delivered as aforesaid, together with the whole of such gunpowder, above the said thirty pounds weight, if such gunpowder be the property of the offender ; and in order that strangers may be the better apprized of the tenor of this act, the health-officer and his deputies are required and enjoined, as soon as they have opportunity, to give information thereof to such captain, master or merchant : and the custom-house and naval officers and their deputies are required and enjoined to give such information to the captains or other persons coming to their several offices, to make entry or report of their arrival or of their cargoes.

SECT. IV. *And be it further enacted by the authority aforesaid,* That if any gunpowder stored in the said magazine be intended for exportation, it shall not be delivered on board of the vessel intended to export the same, while she remains at any of the wharves, in such part of the port of the city of Philadelphia as aforesaid, but after removal of any such gunpowder for the purpose aforesaid from the said magazine, it shall be immediately delivered into some boat or craft, to be used for conveying it on board of such vessel, and which boat or craft shall be ready to receive and convey the same to such vessel, and shall forthwith carry it on board thereof, under penalty of forfeiture of such gunpowder, and of the sum of twenty pounds, to be paid by any person so offending, and of the further sum of fifteen pounds, for every hour such boat or craft

shall remain at any such wharf, after taking or receiving such gunpowder on board; and such gunpowder shall not be laden from any cart, dray or other carriage, on any wharf, within the said city and the aforesaid adjacent country, until the boat or craft into which it is to be delivered, for the purpose of conveying it to the vessel intended to export the same, shall be ready to receive it, under the penalty of twenty pounds, to be forfeited by every person so offending.

1787.

Penalty for unloading the gunpowder from any cart before the boat is ready to receive it.

SECT. V. *And be it further enacted by the authority aforesaid,* That all gunpowder brought by land into the said city, or the adjacent country, within two miles of the said city, if above thirty pounds weight at one time, shall be immediately carried to the said magazine, and delivered to the superintendant thereof, or his deputy, within the hours hereinafter prescribed for his attendance at the the said magazine, under the same penalties as if brought by water, and not delivered, as in such case is herein directed, at the said magazine.

Gunpowder brought by land into the city, or within two miles of it, to be, likewise, deposited in the magazine.

SECT. VI. *And be it further enacted by the authority aforesaid,* That no person shall convey in any dray, cart, waggon, or other carriage, any greater quantity of gunpowder than thirty pounds weight, in or through the said city, or the adjacent country, within two miles of the said city, without securing it in a good bag or bags, or putting a sheet or canvas under and around the said powder, sufficient to prevent the same from scattering from the said carriage, under the penalty of forfeiture of the said gunpowder, and, for every such offence, the sum of twenty pounds, to be paid by every person so offending.

Gunpowder how to be conveyed through the city and adjacent country:

Penalty on transgressing.

SECT. VII. *And be it further enacted by the authority aforesaid,* That the superintendant or keeper of the said magazine shall have and receive, for storage of such powder so deposited there, twelve-pence per barrel per month, and so proportionably for half barrels and quarter barrels, for the first six months, and six-pence per barrel per month, and so proportionably for half barrels and quarter barrels, for every month any such powder shall remain in the said magazine, above the space of six months, and likewise shall have and receive for every twelve pounds or less quantity thereof, delivered by the said superintendant or keeper of the said magazine, or his deputy, at one time, six-pence, over and above the said storage, to be paid to him at and upon the delivery thereof to the owner thereof, or the person appointed by the said owner to receive the same.

Allowance to the superintendant for storage of gunpowder.

SECT. VIII. *And be it further enacted by the authority aforesaid,* That the said superintendant or keeper of the said magazine, or his successors in the said office for the time being, shall be accountable to the owners or deliverers of such powder, from and after their delivery at, and depositing thereof in the said magazine, (lightning and other unavoidable accidents of any kind excepted) and shall also cause daily attendance to be given at the magazine aforesaid, from the hour of nine until twelve in the forenoon, and from the hour of two until five in the afternoon, except in the months of November, December and January, when such attendance in the afternoon shall be from two to four o'clock, for delivering out and receiving of, and taking in such powder, and immediately on so receiving into his cus-

The superintendant to be accountable to the owners of the gunpowder deposited in the magazine.

Hours of attendance at the magazine.

1787. today, at the said magazine as aforesaid, any quantity of gunpowder, the said superintendant or keeper of the said magazine, or his successors for the time being, shall give receipts in writing for the same, expressing the quantity of powder, and describing the numbers and marks of the casks.

Receipts to be given for gunpowder deposited.

Of the removal of the superintendant, and appointing a successor.

How an account of the gunpowder shall in such cases be taken and charged.

The executor of a deceased superintendant to have access to the books.

Penalty on superintendant's neglect of duty;

and appropriation thereof.

Of the recovery of fines, &c. under this act.

SECT. IX. *And be it further enacted by the authority aforesaid,* That the Supreme Executive Council shall have power to remove the said superintendant or keeper of the said magazine, and appoint another in his place, whenever it shall appear to them necessary, as well as to appoint a successor in case of death, in all which cases, the successor in office shall make out an account of all powder in the said magazine, in the presence of a person to be appointed by the Council, as also in the presence of his predecessor, if living, and, if not, in the presence of one of his executors or administrators, if any, if he shall attend on notice given, and the quantity found to be in the said magazine shall be charged to the new officer, which account shall also be compared, in the presence of such persons as aforesaid, with the account of the immediate predecessor, for which purpose the said superintendant, or the keeper of the said magazine, and his successors in the said office, shall keep fair books, in which all such powder, so to be brought into the said magazine, or found therein at the passing of this act, shall be entered, which books shall be delivered up to the successors in the said office; but in case any disputes or mistakes shall arise or appear, the executors or administrators of any deceased superintendant or keeper of the said magazine shall have access at all reasonable times, to the book delivered up, in order to adjust the said disputes or mistakes.

SECT. X. *And be it further enacted by the authority aforesaid,* That if the said superintendant or keeper of the said magazine, for the time being, shall refuse or neglect to give attendance as aforesaid, or to receive or deliver, as the case may be, such powder, or any part thereof, to the owner or deliverer aforesaid, requiring the same within the hours aforesaid, or shall take any more or greater sums or rates, than are by this act allowed to him, he or they, so offending, shall be fined, for every such offence, in a sum not exceeding five pounds, upon conviction of such offence on indictment in the city court of the city of Philadelphia; which fine or fines shall go into the hands of the Treasurer of the commissioners for paving the streets of the city of Philadelphia, for the purpose of paving the said streets.

SECT. XI. *And be it further enacted by the authority aforesaid,* That all and singular the fines, penalties and forfeitures, mentioned in this act, other than those mentioned in the tenth section hereof, shall and may be recovered in any court of record in this state, with costs of suit, by bill, plaint or information, wherein no essoin, protection or wager of law, nor any more than one imparlance, shall be allowed, the one moiety of which fines, penalties or forfeitures, except as before excepted, shall go into the hands of the Treasurer of the commissioners for paving the streets of the city of Philadelphia, to be by them disposed of, for the purpose of paving the said streets, and the other moiety thereof to the informer and prosecutor, who shall sue for the same.

SECT. XII. *And be it further enacted by the authority aforesaid,* 1787.

That any justice of the peace within the limits of the said city, and the adjacent country, within two miles of the said city, on demand made by such superintendant or keeper of the said magazine, shewing a reasonable cause, on oath or affirmation, may issue his warrant under his hand and seal, empowering such superintendant or keeper of the said magazine to search, in the day time, any house, store, shop, cellar or other place, or any boat, ship or other vessels, for any quantity of gunpowder forbidden by this act to be kept in any place or places, and for that purpose to break open, in the day time, any such house, store, shop, cellar or other places aforesaid, or any boat, ship or other vessel, if there be occasion; and the said superintendant or keeper of the said magazine, on finding such gunpowder, may seize and remove the same, in twelve hours, from any such place or places, boats, ships or vessels, to the said magazine, and therein detain the same, until it be determined in the proper court, whether it be forfeited or not by virtue of this act; and the said superintendant or keeper of the said magazine shall not in the mean time be sued, for seizing, keeping or detaining the same, nor shall any writ of replevin issue therefor, until such determination as aforesaid be made, but all such suits are hereby declared to be illegal, erroneous, and abated.

Of issuing warrants to search houses, &c. for gunpowder;

of the removal thereof; and indemnity of the superintendant in so doing.

SECT. XIII. *And be it further enacted by the authority aforesaid,* That the said superintendant or keeper of the said magazine may examine, and, if occasion be, seize any greater quantity of gunpowder, while in any dray, cart, waggon or other carriage, than is allowed hereby to be loaded in the same, or conveyed therein, within the said city, or the adjacent country, within two miles of the said city, and also to examine and seize any gunpowder found in any such carriage as aforesaid, within the said city and adjacent country as aforesaid, which shall be found not to be secured from scattering, in the manner directed by this act, or which may be found in any other situation prohibited hereby, and the same shall be by him conveyed, within twelve hours, to the said magazine, therein to be by him stored and detained, until it shall be determined in the proper court, whether the same be forfeited or not in virtue of this act; and such superintendant or keeper of the said magazine shall not in the mean time be sued, for seizing, keeping or detaining the same, nor shall any writ of replevin issue therefor, until such determination as aforesaid be made, but all such suits are hereby declared to be illegal, erroneous, and abated.

Of the seizure of gunpowder, loaded in carriages, contrary to this act.

and the superintendant's indemnity in so doing.

SECT. XIV. *And be it further enacted by the authority aforesaid,* That if any suit or action be commenced or prosecuted against any person or persons, for any thing done in pursuance of this act, every such person or persons may plead the general issue, and give this act, and the special matter in evidence, at any trial to be had thereon; and if a verdict shall pass for the defendant, or the plaintiff shall become non-suit, or discontinue his action, or if, on demurrer, or otherwise, judgment shall be given against the plaintiff, the defendant shall recover treble costs, and shall have the like remedy for the same, as any defendant hath in other cases.

Proceedings in case of persons sued for any thing done under this act; and what costs to be allowed, if judgment is for defendant.

SECT. XV. *And be it further enacted by the authority aforesaid,* That the superintendant or keeper of the said magazine shall, be-

The superintendant to give bond.

1787. fore he enters on the execution of his office, give bond, with such security to the Supreme Executive Council as they shall deem necessary, in the sum of five hundred pounds, conditioned for the faithful performance of his duty, as directed by this act.

Repeal of all former acts for storing gunpowder.

SECT. XVI. *And be it further enacted by the authority aforesaid,* That all acts heretofore made, in any way respecting the storing or keeping of gunpowder in the said city, or the adjacent country, within two miles of the said city, or in any part of the liberties of the same, shall be, and hereby are repealed.

Passed 28th March, 1787.—Recorded in Law Book No. III. page 199. (2.)

(2.) See an act for the inspection of gunpowder, passed 18th of April, 1795, (chap. 1846.)

By a resolution of the General Assembly of 6th of April, 1790, the executive was authorized to purchase a lot of ground, and erect thereon a gunpowder magazine. (Minutes of Assembly of 1789, 90, pa. 260, 261.) and by a supplement to the act in the text, passed 13th of April, 1791, (chap. 1562,) all gunpowder brought into the city, after the 1st of July, (then) next, shall be deposited and kept in the new magazine (on the banks of Schuylkill, on the north side of Walnut street,) subject to the regulations contained in the act in the text, and that part of the 2d section of the act in the text, which relates to deposits in the old magazine, is repealed. By "a Supplement to "An act for securing the city of Philadelphia, and the neighbourhood thereof from damage by gunpowder," and also, to "An act for providing for the inspection of gunpowder," passed 29th of March, 1803, (chap. 2264,) certain duties are enjoined on the inspector of gunpowder in and for the port of Philadelphia; and an additional compensation allowed to the inspector, and the owners of inspected gunpowder are authorized to convey, immediately from the manufactory, such inspected powder to the place of exportation, or to any ship intended to export the same, subject to the same rules, regulations and penalties contained in the original acts.

A penalty is also inflicted on the superintendent of the magazine, or his deputy, for being concerned, directly or indirectly, in manufacturing or selling gunpowder. And the superintendent, in future, shall receive no fee or emolument, for the delivery of gunpowder, but only for the storage.

By an act, entitled, "An act for the removal of the powder magazine from the city of Philadelphia," passed 4th of April, 1807, (chap. 2804,) commissioners were appointed to sell and convey the present powder magazine and the lot on which the same is erected, and with the proceeds to purchase ground, and erect other magazines; commissioners to be compensated. To erect a magazine for the traders in the city, to supply the daily demand, not less than one mile from the city, nor of a capacity to contain more than ten tons of powder; and one or more magazines to store, or deposit powder in large quantities, not less than four miles from the city. Reserving a right to the state, to deposit powder therein belonging to the public.

As soon as completed, the superintendent to remove the powder from the old to the new magazine, where all powder is to be thereafter kept, subject to the regulations and penalties now in force, with regard to the deposit and inspection of gunpowder in the present magazine.

Five thousand dollars were granted to complete the new magazine, by act of 25th of February, 1808, (chap. 2923.)

CHAPTER MCCLXXII.

An ACT for facilitating the redemption of the bills of credit, emitted in the year one thousand seven hundred and eighty-one, and for redeeming part of the funded debt of the state, by the speedy collection of the arrearages due for unpatented lands which were located before the declaration of independency.

SECT. I. WHEREAS, in and by an act of the General Assembly of this commonwealth, passed the sixteenth day of Septem-

ber, one thousand seven hundred and eighty-five, entitled "An act to compel the speedy settlement, and the paying or securing of the debts due to this state, for lands held by location or other office right, obtained before the tenth day of December, one thousand seven hundred and seventy-six, and yet remaining unpatented," it was, amongst other things, in substance enacted and declared, that every person entitled either in law or equity to lands in this state, within the limits of the purchase or purchases made from the Indians before the declaration of the independency of the United States, by virtue of any grant, warrant, location or office rights whatsoever, made or accrued before the tenth day of December, one thousand seven hundred and seventy-six, upon which a patent had not been issued, might, and every such person was thereby enjoined and required, as soon as conveniently might be, to apply to the proper officers of the Land-Office, and to settle and adjust the sum and sums of money due to the state for the purchase of such lands, respectively, and to pay or secure the same, in the manner in the said act mentioned; and if any person, so entitled as aforesaid to any lands yet remaining unpatented, should refuse or neglect to pay or secure the purchase money, or arrearages thereof, due to the state, and demand a patent for such land, in the manner in the said act directed, on or before the tenth day of April, which would be in the year of our Lord one thousand seven hundred and eighty-seven, every such person, so refusing or neglecting, should be barred and precluded from the benefit intended by the said act, with respect to further time of payment, and should be forthwith prosecuted and proceeded against for the monies due on such lands, by sale of the said lands according to law, without further delay:

And whereas the time, so limited as aforesaid, is now nearly expired, and it is deemed expedient further to extend the same:

And whereas so much of the said arrearages and sums of money, due to this state for lands as aforesaid, as should be sufficient to redeem the bills of credit emitted by virtue of the act passed the seventh day of April, one thousand seven hundred and eighty-one, entitled "An act for emitting the sum of five hundred thousand pounds in bills of credit, for the support of the army, and for establishing a fund for the redemption of the same, and for other purposes mentioned," were, by the said act, solemnly pledged and appropriated for the redemption of the said bills of credit: And whereas, by the payment of part of the said arrearages, and by the appropriation of other funds, the greater part of the said bills of credit have been redeemed, and the sum remaining to be redeemed will require but a moderate proportion of the said arrearages to complete the same, and it is just and proper, that the residue of the said arrearages should be otherwise appropriated, towards discharging the other debts due from the state:

And whereas many of the citizens of this state, thus indebted for lands by them held as aforesaid, are possessed of certificates of debts due from the state, and drawing interest from the treasury thereof, and are desirous of discharging their debts to the state, by paying as much thereof in the said certificates, as may be received

1787.

[Chap. 1169, ante, and see the notes to chap. 1083, ante, p. 102. This act is obsolete, but is retained, as part of the general history of the land laws.]

1787. consistently with the aforesaid appropriation, and the residue in the aforesaid bills of credit, or other current money; Therefore,

SECT. II. *Be it enacted and it is hereby enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same,* That the time limited in the act, first herein recited, for paying or securing to the state the payment for lands held or claimed, as in the said act is described, and for demanding or taking out patents for the same, be, and hereby is, extended to the tenth day of April, in the year of our Lord one thousand seven hundred and eighty-eight; and the periods prescribed by the said acts, for the payments to become due on the securities therein directed to be taken, shall be, and are hereby respectively extended to one year later than the periods in the said acts mentioned.

SECT. III. *And be it further enacted by the authority aforesaid,* That every person entitled to demand a patent for land in this state, according to the direction of the said recited act, on paying one fourth part of the amount of the purchase money, or the arrearages now due, with the interest thereon, in lawful money of this state, or in the bills of credit emitted by virtue of the aforesaid act, passed the seventh day of April, one thousand seven hundred and eighty-one, together with the whole of the office fees, in current lawful money, shall, at his option, pay the residue of such purchase money and interest, in lawful money, or the bills of credit aforesaid, or in certificates of debts due from this state, and now by law entitled to draw interest from the treasury thereof, commonly called funded certificates, on which certificates the interest shall be computed and allowed till the time of such payment: *Provided nevertheless,* That such payment or payments be made and completed on or before the tenth day of April, in the year of our Lord one thousand seven hundred and eighty-eight.

SECT. IV. *And be it further enacted by the authority aforesaid,* That if any gold or silver coin, or other current lawful money, shall be paid to the officers of the Land-Office, or any of them, in discharge of the aforesaid purchase and interest, or any part thereof, the same shall be, and is hereby, appropriated to and for the purchase and redemption of such of the aforesaid bills of credit, emitted in the year one thousand seven hundred and eighty-one, as shall remain unredeemed at and after the aforesaid tenth day of April, one thousand seven hundred and eighty-eight.

SECT. V. *And be it further enacted by the authority aforesaid,* That if any person, so entitled as aforesaid to lands within this state, and yet remaining unpatented, shall refuse or neglect to pay or secure the purchase money, or arrearages thereof, with interest, and demand a patent for the same, in the manner herein before directed, on or before the tenth day of April, which will be in the year of our Lord one thousand seven hundred and eighty-eight, every such person, so refusing or neglecting, shall be barred and precluded from all the benefit intended by this act, with respect to further time of payment, and the mode of such payment, and shall be forthwith prosecuted and proceeded against, by the sale of his said land, according to law, as if this act had not been made.]

Passed 28th March, 1787.—Recorded in Law Book No. III. page 295.

The time limited for patenting lands extended. [Further extended. See notes to chap. 1033, ante. pa. 102.]

Mode of paying for the lands.

Appropriation of specie paid into the Land-Office on account of such lands.

Persons neglecting or refusing to pay the consideration for the lands patented, shall not have the benefit of the act.

CHAPTER MCCLXXVI.

1787.

An ACT to incorporate the Presbyterian church in the township of Londonderry, in the county of Dauphin.

Passed 28th of March, 1787.—Private Act.—Recorded in Law Book No. III.
page 213.

CHAPTER MCCLXXVII.

An ACT to incorporate the Presbyterian congregation in Tinicum township, in the county of Bucks.

Passed 28th of March, 1787.—Private Act.—Recorded in Law Book No. III.
page 217.

CHAPTER MCCLXXVIII.

An ACT for incorporating the Presbyterian congregation of New-London, in the county of Chester.

[In part repealed post.
chap. 1430.]

Passed 28th March, 1787.—Private Act.—Recorded in Law Book No. III.
page 224.

CHAPTER MCCLXXIX.

A SUPPLEMENT to an act, entitled "An Act for re-establishing the charter of the second Presbyterian church in the city of Philadelphia, and for other purposes therein mentioned."

[Original act, vol. 1, pa. 498, chap. 1384.]

Passed 28th March, 1787.—Private Act.—Recorded in Law Book No. III.
page 228.

CHAPTER MCCLXXX.

An ACT to incorporate the Union Library Company of Hatborough, in the Manor of Moreland, and county of Montgomery.

Passed 28th March, 1787.—Private Act.—Recorded in Law Book No. III.
page 229.

CHAPTER MCCLXXXI.

An ACT to incorporate the Baptist church and congregation in Lower-Dublin township, in the county of Philadelphia, in the state of Pennsylvania.

Passed 28th March, 1787.—Private Act.—Recorded in Law Book No. III.
page 237.

1787.

CHAPTER MCCLXXXII.

[See vol. 1,
pa. 242, chap.
477.]

An ACT to enlarge the lots in the State-house square, appropriated for building thereon, respectively, county and city court-houses.

SECT. I. WHEREAS the lot lying at the north-west corner of the State-house square, and appropriated by an act of Assembly, passed on the seventeenth day of February, in the year of our Lord one thousand seven hundred and sixty-two, for building thereon a county court-house, or common-hall, for the county of Philadelphia, and the lot lying at the north-east corner of the said square, and appropriated by the said act of Assembly for building thereon a city court-house, or common-hall, for the city of Philadelphia, respectively, extend in depth southwardly from Chesnut-street of the said city only seventy-three feet, which depth is insufficient for the said purposes: And whereas the said first mentioned lot is, by an act of Assembly of this state, passed the eighth day of April, in the year of our Lord one thousand seven hundred and eighty-five, vested in the Commissioners of the county of Philadelphia, and their successors, and the other lot is vested in the Wardens of the said city, and their successors, for the respective uses aforesaid:

Dimensions
of the lots
for building
the city and
county
court-houses,
enlarged.

SECT. II. *Be it therefore enacted, and it is hereby enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same,* That the said lots shall respectively extend in depth, through the whole easterly and westerly breadth thereof, from the said Chesnut-street southerly, to the full extent of eighty-eight feet; and the said lots, so enlarged and extended, shall be vested respectively in the said Commissioners, and their successors, and in the said Wardens, and their successors, and to the same uses and purposes respectively, as they were before their enlargement, by this act. *Provided always,* That nothing herein contained shall be deemed or construed to prevent or bar any person or persons from enjoying, having or pursuing, in due course of law, his, her or their own private claim, right, title or possession, of, to or in the said lots, or either of them, or to any part of them, or of either of them.

Passed 29th March, 1787.—Recorded in Law Book, No. III. page 236.

CHAPTER MCCLXXXIV.

An ACT for opening and establishing a road, between the navigable waters of the Frankstown branch of the river Juniata and the river Conemaugh.

[COMMISSIONERS to be appointed to lay out a State Highway between the waters of the Frank's town branch of Juniata, and the river Conemaugh. Report to be made to Council who may approve the same, or order a review thereof: and the said highway, when established, shall be a state highway between said points: and the courses and distances shall be entered in the council books, which entry shall be deemed a record thereof.

The said commissioners having marked out said road, were directed to trace the courses of another road, to begin from the terminating spot of the first mentioned road, and lead along the left shore of the *Conemaugh*, to that point where the river begins to be navigable at all seasons; said road to be hereafter opened as occasion may require, and then deemed also a public highway. Allowance fixed for the commissioners, and the sum of £. 500, appropriated for the purposes of this act.] 1787.

SECT. V. *And be it enacted by the authority aforesaid*, That the Frankstown branch of the Juniata, and the Conemaugh, together with the Kiskiminetas, throughout their whole navigable course, shall be deemed and declared public highways.

Frankstown branch of Juniata, and the Conemaugh, and Kiskiminetas, declared highways.

Passed 29th of March, 1787.—Recorded in Law Book No. III. page 234. (a)

(a) The road was run and marked, day of December, 1787, and entered in and confirmed by Council on the 18th the minutes of Council, vol. 8, pa. 205.

CHAPTER MCCLXXXVI.

An ACT for opening a road between the river Susquehanna, at the Falls of Nescopeck, and the Lehigh, at or near the Union saw-mill. (b)

SECT. I. WHEREAS the opening of a road as aforesaid will tend greatly to populate and improve that part of this state, through and near which it may run, and as the few inhabitants are yet unable to bear the expense thereof :

SECT. II. *Be it enacted, and it is hereby enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same*, That the Supreme Executive Council shall, and they are hereby authorized and directed to employ the necessary means for opening the road as aforesaid, from the river Susquehanna, at the falls of Nescopeck, by the river Lehigh, at or near the Union saw-mill: which when opened accordingly, the same shall be registered in the books of the said Council, and be thenceforth deemed a public highway.

The executive to cause the Nescopeck road to be opened; which, when registered shall be deemed a public highway.

SECT. III. *And be it further enacted by the authority aforesaid*, That the Supreme Executive Council may, and they are hereby authorized to expend, in the opening of said road, any sum of the unappropriated public monies, not exceeding one hundred and fifty pounds.

Appropriation of money for that purpose.

Passed 29th March, 1787.—Recorded in Law Book, No. III. page 224.

(b) A further sum was allowed for completing the road mentioned in this act, by an act of the 27th of March, 1789. (*post*. chap. 1407.) [This road was

reported and confirmed, June 23d, 1787, and recorded in council books, No. 8, pa. 101.] (*Note to former edition.*)

1787.

CHAPTER MCCLXXXVII.

An ACT to incorporate and endow the Academy of the Protestant Episcopal Church in the city of Philadelphia.

Passed 29th March, 1787.—Private Act.—Recorded in Law Book No. III. page 221.

CHAPTER MCCLXXXIX.

An ACT to establish a public ferry over the river Schuylkill near Spring Mill, in the county of Montgomery, and vesting the right in Peter Le Gaux, his heirs and assigns.

[THE right to establish a ferry on both sides of the river Schuylkill, near Spring Mills, vested in P. L. to be kept in good order, and subject to such rules and regulations as the legislature shall prescribe ; but P. L. &c. to have no right to land boats on any landing belonging to other persons.]

Passed 8th September, 1787.—Recorded in Law Book No. III. page 241.

CHAPTER MCCXC.

An ACT to divide the county of Franklin into election districts, and to alter the place for holding the general election in the sixth district in the county of Bedford, and for making the townships of Greenwood and Rye, in the county of Cumberland, a sixth district, for the purpose of holding general elections.

SECT. I. WHEREAS, in and by an act of the General Assembly of this commonwealth, that was published on the thirteenth day of September, which was in the year of our Lord one thousand seven hundred and eighty-five, entitled “An Act to regulate the general elections of this commonwealth, and to prevent frauds therein,” it is provided, that for the purpose of general elections, the county of Franklin should be divided into two districts, and that the township of Fannet should be one of the same districts, and the remainder of the said county should be the other of the same districts :

And whereas the major number of the freemen of the townships of Antrim, Washington, Peters and Montgomery, in the said county of Franklin, have, by their petitions to the General Assembly, represented, that by reason of the remoteness of their dwellings from the present place to which they are called to give their votes for Representatives in the General Assembly, their Counsellor, and their county officers, many good citizens are impeded in the exercise of this important privilege, and have desired relief in the premises :

And whereas the freemen of the said townships of Antrim and Washington have prayed this House, that they be set off as a separate district, for the purpose aforesaid :

SECT. II. Be it therefore enacted, by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same, That the said county

of Franklin be, and the same is hereby, divided into four districts, 1787.
 for the purpose of holding the general elections aforesaid; and that
 the townships of Guilford, Franklin, Hamilton, Letterkenny, Lur-
 gan and Southampton, be the first district of the same county, and
 that the freemen thereof assemble and hold their elections at the
 court-house in the same county, in Chambersburg; and that the
 township of Fannet be the second district of the same county, and
 that the freemen of the said township of Fannet assemble and hold
 their election at the house of the widow Elliot, in the same town-
 ship; and that the townships of Antrim and Washington be the third
 district of the same county, and that the freemen of the said town-
 ships of Antrim and Washington assemble and hold their elections
 at the brick house belonging to George Clark, in the town of
 Greencastle; and that the fourth district, for the purpose aforesaid,
 consist of the townships of Peters and Montgomery, and that the
 freemen of the same townships assemble and hold their said elec-
 tions at the house now occupied by James Crawford, in Mercers-
 burgh; and that the inspectors and other officers of the respective
 townships of the county of Franklin give their attendance accord-
 ingly.

Franklin
county di-
vided into
election dis-
tricts.

And whereas the freemen of the sixth district of Bedford county
 have prayed this House, that their general elections aforesaid be
 hereafter holden at the house in Tyrone township, which is at pre-
 sent occupied by David Lowrey, instead of the house of Lazarus
 Lowrey, in Frankstown township:

SECT. III. *Be it therefore enacted by the authority aforesaid,* That from henceforth the general elections of the freemen of the
 sixth district of Bedford county be holden at the house in Tyrone
 township, at present occupied by David Lowrey, and not elsewhere,
 and that the freemen of the same district, and the persons who shall
 be chosen inspectors within the said district, shall assemble and at-
 tend at the said house of David Lowrey accordingly.

The sixth
election dis-
trict of Bed-
ford county
altered.

SECT. IV. And whereas a number of the freemen of the town-
 ships of Greenwood and Rye, in the county of Cumberland, have,
 by their petition, set forth, that their distant situation from the place
 of holding their general elections is found inconvenient, and have
 therefore prayed this General Assembly to enact a law, by which
 the said townships shall be made a separate district for the holding
 their general elections: Therefore,

SECT. V. *Be it enacted by the authority aforesaid,* That the
 townships of Greenwood and Rye shall be the sixth district of the
 county of Cumberland; and the freemen of the said townships shall
 hold their annual and general elections at the mill, late the property
 of David English, and known by the name of English's mill, in
 the township of Rye.

The sixth
district of
Cumberland
county regu-
lated.

SECT. VI. *And be it further enacted by the authority aforesaid,* That the act herein before recited, entitled "An act to regulate the
 general elections of this commonwealth, and to prevent frauds
 therein," so far as it is altered by the provisions of this act, but no
 further, shall be, and the same is hereby, repealed and made void;
 and that those persons, and every of them, who shall be hereafter
 chosen to be inspectors, judges of election, or clerks of the district

Repeal of so
much of the
general elec-
tion law as
is altered by
this act.

1787. elections, by this act established, or newly regulated, shall be obliged to do their duties respectively and severally, and under like penalties and forfeitures, as those which by the act aforesaid are imposed on similar neglects, omissions and breaches of duty, by the same act.

Passed 10th of September, 1787.—Recorded in Law Book No. III. page 320.

CHAPTER MCCXCI.

An ACT for the future endowment of the Pittsburg Academy. (c)

Passed 10th September, 1787.—Private Act.—Recorded in Law Book No. III. page 331.

(c) The academy was instituted by an act of the 28th day of Feb'y, 1787, (Note to former edition.) (ante. chap. 1253,) and by the above act was endowed with 5000 acres of land.

CHAPTER MCCXCII.

An ACT to incorporate the German Lutheran congregation in the borough of Reading, in the county of Berks.

Passed 10th September, 1787.—Private Act.—Recorded in Law Book No. III. page 322.

CHAPTER MCCXCIV.

An ACT to confirm and amend the charter of incorporation of the United Swedish Lutheran churches of Wicacoa, Kingsessing and Upper Merion, called Gloria Dei, Saint James's, and Christ's church.

Passed 10th September, 1787.—Private Act.—Recorded in Law Book No. III. page 254.

CHAPTER MCCXCV.

An ACT to empower the Supreme Executive Council to lay out a town, and otherwise to apportion the lands contained in the tract of land reserved to the use of the state, by the act, entitled "An act for the sale of certain lands therein mentioned, for the purpose of redeeming and paying off the certificates of depreciation, given to the officers and soldiers of the Pennsylvania line, or their representatives, and for appropriating certain other lands therein mentioned, for the use of the said officers and soldiers, to be divided off to them severally at the end of the war."

SECT. I. WHEREAS, by the act of Assembly passed the twelfth day of March, in the year of our Lord one thousand seven

[See ante, chap. 996, and chap. 1128.]

hundred and eighty-three, for the purpose of redeeming and paying off the certificates of depreciation, given to the officers and soldiers of the Pennsylvania line, and for other purposes in the said act mentioned, a certain tract of land was reserved to the use of the state, "containing, (as in the said act is expressed,) three thousand acres, in an oblong of not less than one mile in depth from the Allegheny and Ohio rivers, and extending up and down the said rivers, from opposite Fort-Pitt, so far as may be necessary to include the same :". And whereas it appears that a sale of the said tract, if laid out and disposed of to the best advantage, will furnish a considerable sum of money towards discharging the debts due by this state : Therefore, to attain the said end in the most serviceable manner to the state,

SECT. II. *Be it enacted, and it is hereby enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same,* That the President or Vice-President in Council are hereby empowered to cause to be laid out and surveyed, a town, in lots, with a competent and suitable number of out-lots, for the accommodation thereof, in the said tract, and to cause to be laid out and surveyed the residue of the said tract, in lots, which last mentioned lots shall not be less than one acre, nor more than ten acres each.

The executive authorized to lay out a town in the reserved tract in the depreciation lands ;

SECT. III. *And be it further enacted by the authority aforesaid,* That upon the return of such surveys, which are hereby directed to be made to the President or Vice-President in Council, they shall, and are hereby authorized to sell the whole of the said lots, as they shall think most to the advantage of the state, and to convey the same.

and, upon return of the surveys, to sell and convey the lots.

SECT. IV. *Provided always, and be it further enacted by the authority aforesaid,* That the President or Vice-President in Council shall reserve, out of the lots of the said town, for the use of the state, so much land as they shall deem necessary for a court-house, gaol and market-house, for places of public worship, and for burying the dead, and without the said town, one hundred acres, for a common pasture ; and the streets, lanes and alleys of the said town and out-lots shall be common highways for ever ; and that the sale of the said lots and out-lots herein mentioned, or of any of the said lots or out-lots, shall be made in the town of Pittsburg, or in the city of Philadelphia, at the discretion of the Council, and, previous to the sale or sales in either place, notice shall be given in such newspapers of the said city, as they shall think proper, and also in the Pittsburg Gazette, of such sale, at least sixty days previous to such sale or sales.

Lots for public uses to be reserved.

Places and times of sale.

SECT. V. *And be it further enacted by the authority aforesaid,* That the President or Vice-President in Council is hereby empowered to draw an order or orders on the Treasurer of this state, to defray the cost and charges of surveying, advertising and selling the

Expenses how to be defrayed.

1787. lands aforesaid, to be paid by the Treasurer, out of the unappropriated public monies in his hands.

Passed 11th September, 1787.—Recorded in Law Book No. III.

(d) By an act of the 24th of Sept'r, 1788, the trustees for Allegheny county were authorized to choose any of the lots set apart for public buildings, in the reserved tract opposite to Pittsburg, as a site for a court-house and prison;

but that part of the act was repealed on the 13th of April, 1791, and the trustees directed to purchase a lot in Pittsburg, for the use of the county. (*Note to former edition.*)

CHAPTER MCCXCVII.

An ACT to incorporate the Upper Presbyterian congregation of Marsh creek, in the county of York.

Passed 13th September, 1787—Private Act.—Recorded in Law Book No. III. page 313.

CHAPTER MCCXCIX.

An ACT to divide Washington county into election districts.

SECT. I. WHEREAS, by the eighteenth section of the constitution, it is provided, that each county at its own choice may be divided into districts, hold elections therein, and elect their representatives in the county, and their other elective officers: And as a division of the county of Washington would contribute to the ease and convenience of the good citizens thereof, in holding their annual elections:

SECT. II. *Be it therefore enacted, and it is hereby enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same,* That from and after the ninth day of October next, the elections of the county of Washington, which is divided into six districts, shall be held in six places; to wit, the freemen of the county within the following bounds, beginning at the mouth of Ten Mile Creek, and up the same to the head of David Gray's branch, and thence to the nearest head of Wheeling creek, and down said creek to the state line, thence along said line to Monongahela river, thence down said river to the place of beginning, being the first district, shall hold their elections at the house of Jacob Cline, on Muddy creek; the freemen of the following bounds, beginning at the mouth of Peter's creek, and up the same to the head of the south fork thereof, thence along the dividing ridge, which divides the waters of Monongahela river, and Chartiers creek, to the great road leading from Redstone ferry to Washington, near Martin Dagger's, thence by a straight line to David Enoch's mill, on the north fork of Ten Mile creek, thence by a south line to the principal south fork of said creek, thence with the line of the first district down said creek to Monongahela river, thence down said river to the place of beginning, be-

Washington county divided into election districts.

ing the second district, shall hold their elections at Shasbazer Ben-ley's mill, on Pidgeon creek; the freemen of the following bounds, beginning at the mouth of Montour's run, (Ohio river,) thence up said run to the head of the principal branch thereof, thence south, (crossing Robinson run,) to Miller's run, thence down said run to Chartiers creek, thence by a straight line to the head of the principal fork of Peter's creek, thence with the line of the second district down said creek to Monongahela river, and down said river to Ohio river, and down said river to the place of beginning, being the third district, shall hold their elections at the house of Daniel Shaughan's, in said district; the freemen of the following bounds, beginning at the head of Peter's creek, and along the lines of the second district to the south fork of Ten Mile creek, thence westerly by the lines of the first district to the western boundary line of the state, thence north to Cross creek, thence up said creek to Marshall's saw mill, thence to the head thereof at William Campbell's, thence along the dividing ridge to Miller's run, thence with said run to Chartiers creek, thence along the line of the third district to the place of beginning, being the fourth district, shall hold their elections at the court-house in the town of Washington; the freemen of the following bounds, beginning at the mouth of Montour's run, thence with the lines of the third district to Miller's run to the head thereof, thence with the line of the fourth district, and to the nearest place on said line to the heads of Raccoon creek, from thence a straight line to said creek, and down the same to Ohio river, thence up said river to the place of beginning, being the fifth district, shall hold their elections at the house of Joshua Meek, in said district; and all the freemen of the remainder of the county, not included in the before mentioned districts shall hold their elections at the house of George Blazer, on the waters of King's creek.

Passed 20th September, 1787.—Recorded in Law Book No III.

CHAPTER MCCC.

An ACT for erecting part of Bedford county into a separate county.

SECT. I. WHEREAS it hath been represented to the General Assembly of this state, by the inhabitants of that part of Bedford county which lies on the waters of the Frankstown branch of Juniata, the lower part of the Rays-town branch of the same, the Standing Stone Valley, part of Woodcock Valley, the waters of Aughwick creek, and other the north-easterly parts of the said county of Bedford, that they labour under great hardships from their great distance from the present seat of justice, and the public offices for the said county, now in the town of Bedford: For remedy whereof,

SECT. II. *Be it enacted, and it is hereby enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same, That all and singular the lands lying within the bounds and limits, herein after described and following, shall be, and are hereby, erected into a separate county by the name of Huntingdon county; nannely, be-*

Part of Bedford erected into a new county, and called Huntingdon;

1787.

Its bound-
aries.

ginning in the line of Bedford and Franklin counties, where the new state road, (by some called Skinner's road,) leading from Shipensburg to Littleton, crosses the Tuscarora mountain; thence in a straight course or line, to the Gap in the Shade mountain, where the road formerly called Pott's road crosses the same, about two miles north of Littleton; thence by a straight line to the Old Gap, in Sideling Hill, where Sideling Hill creek crosses the mountain; thence in a straight line by the northerly side of Sebastian Shoub's mill, on the Raystown branch of Juniata; thence on a straight line to the Elk Gap, in Tussey's mountain; computed to be about nineteen miles above or south-westerly of the town of Huntingdon, (formerly called the Standing Stone,) and from the said Elk Gap, in a straight line, to the Gap at Jacob Stevens's mill, a little below where Woolery's mill formerly stood, in Morrison's cove; thence in a straight line by the southerly side of Blair's mill, at the foot of the Allegheny mountain; thence across the said mountain, in a straight line, to and along the ridges dividing the waters of Conemaugh from the waters of Clearfield and Chest creeks, to the line of Westmoreland county; thence by the same to the old purchase line, which was run from Kittaning to the west branch of Susquehanna river; and along the said line to the said west branch, and down the same to the mouth of Moshannon creek, and along the remaining lines or boundaries which now divide the county of Bedford from the counties of Northumberland, Cumberland and Franklin, to the place of beginning.

Privileges of
the new
county.

SECT. III. *And be it further enacted by the authority aforesaid,* That the inhabitants of the said county shall, at all times hereafter have and enjoy all and singular the privileges and jurisdictions, which the inhabitants of any other county within this state do, may, or ought to enjoy, by the constitution and laws of the state.

Of the judi-
ciary depart-
ment of the
county;
and the

SECT. IV. *And be it further enacted by the authority aforesaid,* That [the Justices of the Peace, commissioned at the time of passing this act, and residing within the bounds and limits of the said county, herein and hereby erected and constituted, shall be Justices of the Peace for the said county, during the time for which they are so commissioned;] and they, or any three of them, shall and may hold courts of General Quarter Sessions of the peace; and the Justices of the Common Pleas, in like manner commissioned and residing, or any three of them, shall and may hold courts of Common Pleas in the said county, during the time for which they are, as aforesaid, so commissioned; and the said courts of General Quarter Sessions of the Peace and of Common Pleas shall have all and singular the powers and authorities, rights and jurisdictions, to all intents and purposes, which any other courts of General Quarter Sessions, and of the Common Pleas, in any of the other counties of this state, may, can or ought to have in their respective counties; which courts shall sit and be held for the said county of Huntingdon, hereby erected, [on the first Tuesday in the months of December, March, June and September, at the house now occupied by Ludwig Sell, in the town of Huntingdon, in the said county, until a court-house shall be built, as hereinafter directed, for the said county;] and then shall be holden and kept at the said court-house, on the days and times before mentioned.

places and
times of
holding the
courts.

SECT. v. *And be it further enacted by the authority aforesaid,* 1787.
 That the inhabitants of each township in the said county, qualified by law to elect, shall, at the usual places in the respective districts, as heretofore laid off for the county of Bedford, and which may now fall within the county hereby erected; that is to say, in the town of Huntingdon, for what was called the third district, at the house of George Cluggage; in Shirley township, for the fifth district; and at the house of David Lowrey, in Tyrone township, for the sixth district; at the same time, and in like manner, as the inhabitants of the townships and districts of other counties in the state, meet and choose [Justices of the peace,] inspectors, judges of the election for Representatives in General Assembly, a [Counsellor,] and other elective county officers, agreeably to the constitution and laws of this state for the time being.

Election districts of the county;

and officers to be elected.

SECT. vi. *And be it further enacted by the authority aforesaid,* Of the county officers.
 That the Sheriff, Treasurers, Prothonotaries, Collectors of excise, and all such other officers as have heretofore given security for the faithful discharge of their several offices in the other counties of this state, and who shall hereafter be appointed or elected in the said county, before they or any of them shall enter upon the execution of their respective offices, duties and trusts, shall give sufficient security in the like sums, and in the like manner and forms, and for the same uses, trusts and purposes, as such other officers and persons, elected and appointed for the like offices, duties and trusts, are obliged by law to give in the county of Bedford, for the time being.

SECT. ix. And whereas the petitioners for erecting the said county have unanimously represented to this house, that the town of Huntingdon, on the river Juniata, is a proper and central place for the seat of justice in the said county; and the proprietor of the said town, at the desire and with the approbation of the inhabitants and owners of lots and buildings in the same, hath laid off and set apart a proper and sufficient quantity of grounds for the site of a court-house, county gaol and prison, and hath engaged to give, assure and convey the same to the commonwealth, in trust, and for the use and benefit of the said county; provided the said town of Huntingdon shall be fixed upon by law as a proper place for the seat of justice in the said county: Therefore,

SECT. x. *Be it further enacted by the authority aforesaid,* County trustees appointed to take public lots.
 That Benjamin Elliot, Thomas Duncan Smith, Ludwig Sell, George Ashman and William McElevy, be, and they are hereby appointed trustees for the said county of Huntingdon, and they, or any three of them, shall take assurance of and for the land and grounds proposed to be appropriated, as aforesaid, in the said town of Huntingdon, for the site of a court-house and county gaol or prison, and shall take care that the quantity of ground so to be appropriated be sufficient and convenient for the public purposes aforesaid, and as little detrimental as possible to the proprietors and owners of the contiguous lots and buildings; which assurance and conveyance of the grounds, as aforesaid, the said trustees, or any three of them, shall take in the name of the commonwealth, in trust, and for the use and benefit of the said county of Huntingdon, and thereupon erect a court-house and prison, sufficient to accommodate the public service of the said county.

1787.

Jurisdiction
of the Su-
preme Court
extended to
the new
county.

SECT. XII. *And be it further enacted by the authority aforesaid,* That the Justices of the Supreme Court of this state shall have the like powers, jurisdictions and authorities, within the said county of Huntingdon, as by law they are vested with and entitled to have and exercise in any other county or counties of this state, and they are hereby authorized and empowered, from time to time, to deliver the gaol of the said county of capital and other offenders, in the same manner as they are authorized and empowered to do in any other counties of the same.

Regulations
respecting
the third,
sixth, and
fifth election
districts of
Bedford
county.

SECT. XIV. *And be it further enacted by the authority aforesaid,* That such of the inhabitants of the third and sixth districts of the said county of Bedford, as shall not fall within the lines of the county of Huntingdon, herein and hereby erected, shall give their votes, at the next and succeeding general elections for the said county of Bedford, at the town of Bedford; and such of the inhabitants of the fifth district, as shall not fall within the lines of said county, but continue within the county of Bedford, shall vote at the house of William Kerney, in the second district, till further provision be made for that effect according to law. (e)

Passed 20th September, 1787.—Recorded in Law Book No. III. page 329.

(e) The sections omitted in this act were temporary and are now obsolete.

§ 7 and 8 respected the temporary apportionment of representation, between Bedford and Huntingdon counties.

§ 11, money to be raised for the county buildings.

§ 13, provided for the continuance of the suits commenced in Bedford county.

Commissioners appointed by act of 2d of March, 1789, (chap. 1381,) to run the boundary lines of Huntingdon county.

By an act passed the first of April, 1791, (chap. 1533,) for running the boundary lines between Huntingdon and Mifflin counties. The line is described as follows, "Beginning where the province line crosses the Tuscarora mountain, and running along the summit of that mountain to the Gap, near the head of the Path Valley; thence with a north line to the Juniata; and the said line, from the said Gap to the Juniata, being run, shall be the boundary line between the counties of Huntingdon and Mifflin, on the south side of the river Juniata.

Other commissioners to be appointed by act passed 30th of September, 1791, (chap. 1585.)

And, by act passed 29th of March, 1792, (chap. 1606,) "A straight line, beginning in the middle of the Water Gap in the Tuscarora mountain; and from thence to the river Juniata, in such direction as to include Joseph Galloway's farm within Huntingdon county, at the mouth of Galloway's run, shall be the line between Huntingdon and Mifflin counties,

By act of 29th of March, 1798, (chap. 1980,) commissioners to be appointed to run the lines between Bedford and Huntingdon, according to the following boundaries, "Beginning at the old Gap in Sideling hill, where Sideling hill creek crosses the same; thence in a straight line, by the northerly side of Sebastian Shoup's mill, on the Ray's-town branch of Juniata, thence in a straight line to the Elk Gap in Tussey's mountain. And between Huntingdon and Somerset, according to the following boundaries, viz. Beginning on that part of the line between the counties of Bedford and Huntingdon, near the southerly side of Blair's mills, at the foot of the Allegheny mountain; thence across the said mountain, in a straight line, to and along the ridges dividing the waters of Conemaugh, from the waters of the Clearfield and Chest creeks, to the line of Westmoreland county; thence by the same to the old purchase line, which was run from Kittanning to the west branch of the Susquehanna

And see the act erecting Centre county, passed 13th of February, 1800, (chap. 2092.)

And by act passed 7th of January, 1801, the line between Huntingdon and Centre, shall begin at a point on the Tussey's mountain, three miles south-west of the line, which divided Mifflin and Huntingdon counties, thence by a direct line to the head of the south-west branch of Bald Eagle creek, and thence a direct line to the head waters of the Moshannon, (chap. 2147.)

Part of Huntingdon to form part of Cambria county, by act of 26th of March, 1804, (chap. 2466.)

By the last enumeration, the county of *Huntingdon*, was found to contain two thousand seven hundred and sixty-six taxables; and with the county of *Mifflin* five thousand two hundred and seven taxables. *Huntingdon* therefore sends two members to the house of representatives, and in conjunction with the county of *Mifflin*, one member to the senate, in pursuance of the act of 21st of March, 1808, (chap. 2931.) apportioning the representation of the state.

The third and fourth election districts established by act of 22d of September, 1794, (chap. 1774.)

The fifth and sixth election districts established by act of 21st of March, 1797, (chap. 1822, sect. 7.)

The seventh election district established, and part of the fifth annexed to the third district, by act of 4th of April, 1798, (chap. 1994, sect. 1-2.)

The eighth election district established by act of 16th of January, 1799, (chap. 2001.)

Place of holding the elections in the

fourth district changed by act of 8th of April, 1799, (chap. 2050, sect. 18.)

The ninth election district established, and the first and eighth districts enlarged by act of 17th of December, 1800, (chap. 2144.)

The place of holding elections in the sixth district, changed by act of 25th of February 1793, (chap. 2327.) And in the 7th district, by act of 5th of March, 1804, (chap. 2432.)

Another ninth district established by act of 31st of March, 1806, (chap. 2715, sect. 15.)

The tenth election district established by act of 11th of April 1807, (chap. 2856, sect. 18.)

The places of holding elections in the second and third districts, changed by act of 4th of April, 1809, sect. 15-16.

By the judiciary act of 24th of Feb'y, 1806, *Mifflin*, *Centre*, *Huntingdon* and *Bedford*, form the fourth judiciary district. The courts are held on the second Mondays of January, April, August and November. The term continues one week.

Huntingdon forms part of the southern district of the supreme court.

CHAPTER MCCC I.

An ACT to incorporate the Protestant Episcopal Church of Saint John, at York-Town.

Passed 20th September, 1787.—Private Act—Recorded in Law Book No. III. page 325.

CHAPTER MCCC II.

An ACT for establishing and building a bridge across Conestogoe creek, in the county of Lancaster. (f)

SECT. I. WHEREAS it hath been represented to this House, by the petitions of a considerable number of the inhabitants of the county of *Lancaster*, that the erecting a good and substantial bridge across the *Conestogoe* creek, on the great road leading from the city of *Philadelphia* to the borough of *Lancaster*, in the county of *Lancaster*, would greatly benefit the trade and general interest of the community, which at present are considerably impeded by the frequent rise of the waters of said creek, and the badness of the landing places on each side thereof: And whereas *Abraham Witmer*, in order to effect an uninterrupted communication between the city of *Philadelphia* and the western counties of this state, and at the same time to obtain some advantages for himself and family, is desirous of erecting a bridge, as aforesaid, across the said creek, at his

(f) See a supplement to this act, (chap. 1999,) passed 4th of April, 1798. (Note to former edition.)

1787. proper cost and expense, and therefore hath prayed the General Assembly to vest the said bridge, when built, in him, his heirs and assigns, for ever, with liberty to demand and receive such toll or fees from travellers, as hereinafter mentioned and expressed; the said Abraham Witmer engaging, for himself, his heirs and assigns, that if at any future day the legislature shall think proper to make the same a free bridge, he or they shall surrender and give up their right to receive toll for the said bridge, upon receiving a reasonable compensation for his trouble and expense, to be estimated by indifferent persons, chosen equally by the parties, as herein after is expressed and declared: And whereas the plan proposed by the said Abraham Witmer, for erecting a toll bridge over Conestogoe creek, appears to this House to be beneficial to the public: Therefore,

SECT. II. *Be it enacted, and it is hereby enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania in General Assembly met, and by the authority of the same, That* the property of the aforesaid bridge, when built, shall be, and the same is hereby vested in the said Abraham Witmer, his heirs and assigns, for ever, and that the said Abraham Witmer, his heirs or assigns, shall and may demand and receive toll from travellers, and others, according to the following rates, viz. For every coach, landau, chariot, pheton, waggon, or other four wheeled carriage, the sum of one shilling and six-pence; for every chaise, riding-chair, cart, or other two wheeled carriage, the sum of nine-pence; for every sled, the sum of one shilling; for every single horse and rider, the sum of four-pence; for every foot passenger, the sum of two-pence; and one penny for every head of horned catde, sheep or swine, crossing the same.

SECT. III. *And be it further enacted by the authority aforesaid, That* it shall and may be lawful to and for the said Abraham Witmer, his heirs and assigns, to erect and build, maintain and support a good and substantial bridge over and across the said creek, at the place aforesaid. *Provided nevertheless, That* a passage on said road of twenty feet wide, in a direct and straight line, on the north side, and at both ends of said bridge, be left free, open, and clear of every incumbrance or interruption whatsoever.

SECT. IV. *And be it further enacted by the authority aforesaid, That* if the said Abraham Witmer, his heirs or assigns, or whosoever shall hereafter own or possess the same bridge, shall exact or demand any greater or other rates or prices for the passage over the same, than what is herein before prescribed or specified, or shall neglect to keep the said bridge in good repair, he, she, or they, so offending, shall, for every such offence, forfeit and pay the sum of ten pounds, one moiety thereof to the poor of the townships of Lancaster and Lampeter, in the county of Lancaster, in equal portions, and the other moiety to the party complaining, or who may sue for the same, to be recovered before any Justice of the peace of the said county, who is hereby empowered, on information made to him on oath of any such offence, to issue his summons or warrant to any constable of the county, commanding him to bring, or to cause every person, against whom such information shall be made, to come before him, and on due proof of the said offence to convict such person

The bridge over Conestogoe creek vested in A. Witmer.

Rates of toll to be taken.

Authority to build the bridge.

A passage to be left open on the road.

Penalty on taking more toll than the law allows;

to recover the same.

thereof, and on such conviction to issue his warrant, after the expiration of five days from the date of such conviction, to any such constable, to levy the said sum of money on the goods and chattels of such offender, by distress and sale thereof; and in case no goods or chattels of the said offender can be found, on which to make such distress, then to take his body, and commit him to the gaol of the county where such offence is committed, until the said sum be paid. *Provided always*, That any person as aforesaid convicted, who shall find himself aggrieved thereby, may, within the said five days, appeal to the next court of Quarter Sessions for the county, which appeal, on giving security within the said time, before the said Justice, by two sufficient freeholders of the county, to pay all costs, shall be allowed, and if the conviction so made by the said Justice shall be confirmed, the said Justice shall proceed to levy the said forfeiture in manner herein before directed.

1787.

Appeal allowed.

SECT. V. *And be it further enacted by the authority aforesaid*, That all poor persons, exempted from the payment of county rates and levies, shall have liberty to pass and repass the same bridge toll free.

What paupers shall be exempted from toll.

SECT. VI. *And be it further enacted by the authority aforesaid*, That whensoever, at any time after the erection and building of the said bridge, it shall seem expedient to the legislature to constitute and make the said bridge, so erected and built, a free bridge, by a law, to be enacted for that purpose, three commissioners shall be appointed by the legislature, on the part of the commonwealth, and three by the said Abraham Witmer, his heirs or assigns, who, or any four or more of them, shall estimate what sum or sums of money the said Abraham Witmer, his heirs and assigns, shall be entitled to receive, as a compensation for his trouble and expenses in building and maintaining the said bridge, which sum or sums shall be paid to him or them, out of the treasury of this commonwealth.

The legislature may make the bridge a free one, paying a compensation to the owner.

Passed 22d September, 1787.—Recorded in Law Book No. III. page 304.

CHAPTER MCCIII.

An ACT to incorporate and endow an academy, or public school, in the town of Washington.

Passed 24th September, 1787.—Private Act.—Recorded in Law Book No. III. page 307.

CHAPTER MCCCIV.

An ACT for erecting the town of York, in the county of York into a borough, for regulating the buildings, preventing nuisances and encroachments on the commons, squares, streets, lanes and alleys of the same, and for other purposes therein mentioned.

[Printed at large 3d vol. 8vo. pt. 221. 2d vol. folio. page 533.]

[SECT. II. YORK erected into a borough, and its boundaries described. 3. Borough officers appointed until others should be elected. 4. The corporation to be styled "The burgesses and in-

1787. habitants of the borough of York, in the county of York," with the usual corporate powers. 5. The time and manner of choosing the future officers prescribed, and qualification of electors, election to be on the first Monday in May, annually. 6. The persons chosen to take a certain oath of office. 7. Times and places of holding markets and fairs fixed, clerk of the market, how to be appointed, and his powers and duties. 8. Penalty on persons elected, refusing to act as borough officers. 9. Of the borough meetings, and by-laws, how to be made; and fines to be imposed for the breach of them. 10. Buildings heretofore erected, not to be deemed nuisances. 11. But penalty on future encroachments on the streets, lanes and alleys. 12. Of the regulation of party walls and streets; and appointment of surveyors and regulators, their power and duty; the expense of party walls how to be borne. 13. Penalty on building before a view by the regulators. 14. Appeal allowed to the next sessions from the decision of the regulators. 15. Compensation of regulators, and how to be paid. 16. Power of the regulators respecting partition fences, and proceeding, if either party neglect the order of the regulators. 17. Supervisors and assessors to be elected annually on the third Monday in March, and the manner how. 18. Notification of the election, how to be given. 19. Rates for keeping the streets in repair, how to be laid, not to exceed a shilling in the pound, in any one year, on the clear annual value; a prescribed oath to be taken by the assessors, before any Justice of the county, to be recorded by the clerk of the Quarter Sessions. 20. How vacancies in the offices of supervisors and assessors are to be supplied, and the compensation to be allowed to those officers. 21. Rates are to be allowed by a burgess, and a justice of the peace of the county, before collection; proceedings to levy the same, with an appeal by petition, to the next sessions by the party grieved. 22. Goods of tenant may be distrained for payment of the tax; but 23. Tenant may deduct it from the rent, or recover it by action of debt, but not to affect any agreement between the parties, as to payment of the tax. 24. The streets, &c. how to be cleansed and repaired. 25. Supervisors may enter lands and lots for that purpose, and penalty for filling up drains or ditches opened by them. 26. Supervisors neglecting their duty, how punished, with an appeal to the next sessions, if aggrieved. 27. The accounts of the supervisors, how to be settled; and balances, how to be paid; and penalty on their neglect or refusal therein; with an appeal to the next sessions, if aggrieved. 28. The borough declared to be one district of the county of York, and overseers of the poor, and inspectors of elections to be appointed therein, &c. 29. Justices residing in the borough, may act relative to the poor. 30. But not in cases of appeal, (obsolete.) 31. Penalty on throwing rubbish in the street in case of building, &c. 32. Or in other cases. 33. Or casting it from waggons or carts. 34. Or for discharging nauseous liquors into the streets. 35. Or dead carcasses, or filth from vaults or privies, &c. 36. Or for obstructing the common sewers. 37. Or for extending pavements beyond the width allowed by the regulators or surveyors. 38. Or setting up porches or cellar doors beyond the legal distance. 39. Provision respecting porches, &c. now standing. 40. Penalty for maliciously removing water pipes,

or obstructing the water. 41. Of the storage of gunpowder in the borough. 42. Encroachments on the commons, how to be abated. 43. And future encroachments, how to be prevented. 44. Penalty for digging holes, pits, or quarries on the commons, without licence. 45. Penalties, fines and forfeitures, how to be recovered and appropriated. 46. Appeals to court how to be allowed and proceeded on. 47. The operation of the general road law not to extend to the borough. 48. Any person sued, &c. under this act, may plead the general issue, and give this act in evidence, in justification, &c.]

1787.

Passed 24th September, 1787.—Recorded in Law Book No. III. page 269.

CHAPTER MCCC.V.

An ACT to declare and regulate Escheats. (g)

SECT. I. WHEREAS the due cultivation and improvement of every country greatly depends on the certainty of titles to real estates, and no regular course of proceeding hath been heretofore provided in Pennsylvania for distinguishing, and bringing into the public treasury, the value of the real and personal property of such persons, who, being possessed thereof within the same, die intestate, and without any known kindred, whereby the commonwealth is prevented of her rights, and the real estates which were of such intestates are holden by the possessors of the same, without any legal title, and the improvement thereof is consequently greatly hindred: Wherefore,

SECT. II. *Be it enacted, and it is hereby enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same,* That, from and after the publication of this act, if any person, who, at the time of his or her death, was seized or possessed of any real or personal estate within this commonwealth, die intestate, without heirs or any known kindred, such estate shall escheat to the commonwealth, subject to all legal demands on the same; provided that no escheat of real estate, for want of heirs, shall be, where brothers or sisters of the half blood, or father or mother, or grandfather or grandmother of the deceased, survive, to take the same, but that such brother and brothers, sister and sisters, by equal portions, if there be more than one, or, in default thereof, such father, or, in default of him, such mother, or, in default thereof, such grandfather, or, in default of him, such grandmother, shall inherit and hold the same estate in fee simple.

When there shall be an escheat.

(g) By an act of the 11th of February, 1789, aliens were allowed to purchase and hold real estates within this commonwealth; and that act expiring, by its own limitation, on the first of January, 1792, was revived and continued, for the term of three years, by an act of the eighth of March, 1792. By an act of the 23d of February, 1791, aliens were enabled to acquire, to take, hold

and dispose of real estates, by devise, or descent, and dispose of personal estates, to which they may be entitled, by testament, donation, or otherwise. (*Note to former edition.*) [Supplement to the act in the text, chap. 1517.] And see the general index, title *alien*, and the act of 10th of February, 1807, (chap. 2737.)

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Escheator-General to be appointed, with power to appoint deputies.

Process to ascertain escheats by an inquest.

The inquisition to be transmitted to the Prothonotary of the Supreme Court.

Process to secure the property, after inquisition found.

SECT. III. *And be it further enacted by the authority aforesaid,* That the Supreme Executive Council may and shall commissionate a person, of integrity and ability, to be Escheator-General for this commonwealth (who shall hold his office for the term of seven years, if he shall so long behave himself well,) and shall be empowered to appoint a deputy in each county within the same, for whom he shall be accountable: And so often as information shall be given to the Escheator-General or to the Deputy-Escheator of the proper county, of any person dying intestate, or without heirs or any known kindred, as aforesaid, and who was, at the time of his or her death, seized or possessed of any real or personal estate within such county, the said Escheator-General shall, forthwith, issue his precept, directed to the Sheriff or the Coroner of the county, as the case may require, thereby commanding such Sheriff or Coroner to impanel and summon twenty-four good and lawful men of the same county to come before the same Escheator, or the deputy to be named therein, at some public and convenient place within the same county, not less than ten, nor more than twenty days thereafter, to enquire, whether (as shall be alleged) the said person hath died without heirs or known kindred, as aforesaid, and whether such decedent was, at the time of his or her death, seized or possessed of any and what estate, real or personal, in the same county, and also in whose hands or possession the same shall be; and when the said twenty-four persons, so impanelled and returned as aforesaid, or any sixteen or more of them, shall appear, according to the summons aforesaid, they shall (not exceeding twenty-three in number) be sworn or affirmed, as an inquest, to enquire concerning the matters in the said precept set forth; and the said Escheator or his deputy, and the said inquest, shall, thereupon, proceed to enquire, by the testimony of competent witnesses, duly sworn or affirmed, and other lawful evidence, concerning the matter in the said precept set forth, and shall permit witnesses, upon oath or affirmation made before him, (which he is hereby empowered to administer) and other lawful evidence, to be heard and adduced; and if any twelve or more of the said inquest shall find that any such estate, real or personal, within the said county, hath escheated to the commonwealth, an inquisition thereof shall be made, signed, and sealed by the Escheator, or his deputy, and twelve or more of the inquest that find the same, setting forth, that the intestate person, in the same writ named, hath died without heirs, or any known kindred, and specifying the estate, real or personal, (if any) of which such intestate died seized or possessed, and also the person or persons in whose hands or possession the same estate shall be; which inquisition, to be taken as aforesaid, shall be certified and transmitted by the said Escheator-General, as soon as conveniently may be after the holding of such enquiry, into the office of the Prothonotary of the Supreme Court.

SECT. IV. *And be it further enacted by the authority aforesaid,* That immediately upon the finding of such inquisition, the Escheator-General shall issue his writ, directed to the Sheriff or Coroner of the county, as the case shall require, commanding him to seize, attach and secure the goods and chattels, so found to be escheated as

aforesaid, in whose hands soever the same shall be found; or if it be found by the said inquest, that the said goods and chattels be eloiigned, then to seize and attach so much of the goods and chattels of the person or persons who shall have eloiigned the same, as shall be equal in value to the goods and chattels which be eloiigned, unless the person or persons in whose hands or possession such goods and chattels be found, give bond to the commonwealth, with sufficient security, to appear at the next Supreme Court thereafter, to traverse the said inquisition; and likewise, in case the same be confirmed, to render to the commonwealth the same goods and chattels found to be in his or her hands; which writ so to be issued, shall be duly returned to the Escheator-General, together with an inventory and appraisement of the goods and chattels (if any) which be seized and attached by virtue thereof, and the said Sheriff or Coroner shall, thereupon, sell the same goods and chattels at public auction, after ten days public notice of such sale, and shall, without delay, pay over the monies therefrom arising to the Treasurer of the commonwealth; copy of which return, inventory and appraisement, together with the account of sales of the same goods and chattels, shall without delay, be transmitted to the Escheator-General, and by him to the Comptroller-General of the commonwealth, and the same Sheriff shall be accountable to the said Comptroller-General, as in other cases, for the monies, which, by virtue of this act, shall come to his hands; and in case of lands or hereditaments which may be found to be escheated to the commonwealth, the said Escheator-General shall lease the same, for any term not exceeding two years, to the person or persons, who, at the time of finding the inquisition concerning the same, shall be in possession thereof, provided he give a reasonable rent therefor; and if the person or persons so in possession claim title thereto, he, she or they shall give bond, as aforesaid, to prosecute his, her or their claim, before the Supreme Court, in the manner hereinafter directed, and also to pay to the commonwealth a reasonable rent for the annual profits of the same land and hereditaments, in case the judgment of the said court shall establish the title of the commonwealth; and in case such tenant or tenants in possession will not accept of a lease as aforesaid, and give such bond as aforesaid, the Escheator-General shall lease the same lands and hereditaments, during the term aforesaid, to some other tenant or tenants of sufficient ability, and issue his writ, in the nature of an *habere facias possessionem*, directed to the Sheriff or Coroner of the county, as the case may require, commanding such officer to remove the tenant or tenants off the premises, out of possession, and to deliver possession thereof to such lessee or lessees.

SECT. V. *And be it further enacted by the authority aforesaid,* That after the return of such inquisition as aforesaid into the office of the Prothonotary of the Supreme Court as aforesaid, if there be any that claim the estate, real or personal, so as aforesaid found to be escheated, he, she or they shall be heard without delay, upon a traverse to the office, *monstrans de droit*, or petition of right, and the testimony, taken in writing, on finding of the inquisition concerning the same land, shall be admitted, as legal testimony on the part of the commonwealth; but if no such claim be made to lands so found

Claims to be
filed and
heard in the
Supreme
Court, after
inquisition
found.

1787.

to be escheated as aforesaid, within seven years next after the inquisition concerning the same be returned into the office of the Prothonotary of the Supreme Court, or if, upon claim, the title of the commonwealth be established to any lands, which be found to be escheated as aforesaid, in such case the Prothonotary of the Supreme Court shall certify to the Escheator-General, that no claim had been made, or that if such claim had been made, judgment thereupon had been rendered against the same, and the title of the commonwealth to the same land established, whereupon the said Escheator shall proceed to make sale, by public auction, of the premises, to him, her or them, that will offer the best and highest price for the same; such sale to be after public notice of the time and place of holding thereof, and, together with the conditions thereof, advertised at least one month in two or more of the public newspapers of this commonwealth, and also by writings affixed on the door or doors of the court-house of the county, wherein the lands lie; and immediately after the sale as aforesaid shall be made, the Escheator shall certify the name, surname and addition of the purchaser of the lands sold by him, as herein before directed, to the President, or in his absence the Vice-President, in Council, who, on the filing of such certificate in the office of their Secretary, together with an acquittance from the Treasurer of this commonwealth for the price bidden and offered as aforesaid, shall, by deed, under the great seal, grant the same lands and hereditaments to the purchaser thereof, to hold to him or her, his or her heirs and assigns, for ever, subject, nevertheless, to any reversion, remainder, lease, rent, common mortgage, incumbrance, office, or other profit, issuing out of the same lands, as the same lands respectively were subject to, before the finding of the inquisition touching the particular lands so sold: *Provided always*, That the person or persons who were entitled to such reversion, remainder, lease, rent, common mortgage, lien, office, or other profit, had, previously to the sale of the said lands, exhibited his, her or their claim to the Supreme Court, and established his, her or their title to the same, in default of which they shall be for ever debarred from recovering the same.

Of sales of
escheated
property.

The same to
be certified
to the Exe-
cutive.

Proviso as to
prior liens
and incum-
brances.

Mode of pay-
ing rightful
claimants,
in the case
of property
sold as
escheat.

SECT. VI. *And be it further enacted by the authority aforesaid*, That if any person shall, within seven years next after the sale of any lands, as herein before directed, appear, and make claim thereto, in manner aforesaid, and establish his, her or their title to the same, as herein after directed, in such case, and not otherwise, such person shall be entitled to receive from the Treasurer of this state, by virtue of a warrant for the same, signed by the President, or in his absence by the Vice-President, in Council, all such monies as the commonwealth shall have received on the sale of such lands, after all charges thereon be deducted; and if any person, within five years next after the sale of such goods and chattels as aforesaid, shall make his or her claim, in manner herein before directed, and establish his or her right thereto, as herein after provided, he or she shall, in like manner as in the case of real estate, by warrant of the President or Vice-President, in Council, receive all such monies as had been received by the commonwealth for the same goods and chattels, after all charges thereon be deducted.

SECT. VII. *Provided always,* That if, at the time of sale as aforesaid, any person having claim to the goods and chattels, or to the lands, so sold as aforesaid, be out of this state, covert baron, imprisoned, an infant, or insane, such person, if an inhabitant of this state, shall be allowed, in the case of goods and chattels, two years, and, in case of real estate, four years, to be computed from and after the return of such claimant into this state, becoming discovert, at large, attaining to full age, or recovering sound mind and memory, as the case may be, to make his or her claim to such estate respectively; and that any person having claim to such real or personal estate, who, at the time of such sale, shall not be an inhabitant of this state, yet be of full age and of sane mind and memory, such person, continuing to reside elsewhere, shall be allowed to make his or her claim, as aforesaid, within five years, to be computed from and after the sale of the goods and chattels, and seven years, to be computed from and after the sale of the lands, by such person so claimed.

1787.
Proviso, in favour of claimants under legal disabilities.

SECT. VIII. *And be it further enacted by the authority aforesaid,* That if any person, at the time of the death of any intestate as aforesaid, shall be indebted to such intestate, or if any part of the estate, real or personal, which was of such intestate, and not mentioned and included in such inquisition, be in the hands or possession of any person dwelling within this state, the same shall be recovered to the use of the commonwealth, by information of debt, intrusion or action, in the nature of trover and conversion, or upon the case, for money received to the use of the commonwealth, as the case may require, in which proceedings, respectively, the inquisition touching the estate of such intestate shall be admissible evidence, to prove that the same intestate died without heirs or known kindred, as herein before described.

Of the debts due to intestates, whose property has escheated.

SECT. IX. And with intent that all estates real and personal, which shall escheat to the commonwealth from and after the publication of this act, may be discovered, so that the commonwealth may be secured of the public right to the same, and that the titles to such lands which shall so escheat may be re-established, and industry and improvement thereupon exerted by the future possessors thereof with full confidence, *Be it further enacted by the authority aforesaid,* That the person who shall first inform the President or Vice-President in Council, by writing, signed by such person, in the presence of two subscribing witnesses, of any escheat happening within this commonwealth, from and after the publication of this act, and who shall procure necessary evidence to substantiate the title of the commonwealth to the same, and shall prosecute the right of the commonwealth thereto with effect, such person shall be entitled to one third part of the price, which such goods and chattels, or one fifth part of the price, which such lands, respectively, shall have produced, after all costs of prosecution and charges of sale be deducted therefrom.

Reward for informing of escheats.

SECT. X. *Provided nevertheless,* That before such third part be paid to the person who shall first give information as aforesaid, his or her heirs or representatives (which payment shall be by warrant for the same, signed by the President or Vice-President in Council,

Proviso, that security shall be given by the informants.

1787. on the Treasurer of the commonwealth) bond, with sufficient freehold security, shall be given to the commonwealth, conditioned to refund the same, or any part thereof, as the case may be, if any claimant to the estate, upon which such one-third or one-fifth part shall become payable, appear, within the time herein before limited, touching such estate, and establish his or her title to the goods and chattels, or lands, respectively, which shall have been sold as aforesaid.

The commonwealth not to acquire a greater interest by the Escheat, than the party had.

SECT. XI. *And be it further enacted by the authority aforesaid,* That in every case wherein goods or chattels, or lands, be holden in common with any person, whose estate shall escheat, as aforesaid, the commonwealth shall not acquire by such escheat any other or greater title to the same, than the person who shall die intestate, without heirs or known kindred, as aforesaid.

The Escheator to give a bond;

SECT. XII. *And be it further enacted by the authority aforesaid,* That the said Escheator-General, before he enter upon the duties of his office, as required by this act, shall give bond, with two sufficient sureties, to the commonwealth, for his faithful performance of the trust reposed in him as aforesaid, in the sum of two thousand pounds, which bond shall be deemed to relate to his proceedings by virtue of this act, during seven years from and after the date thereof, and not afterwards, and shall be enforced, as to any suit or action which shall be commenced within the term of twelve years, to be computed from the date of such bond, and not otherwise; and that the Escheator who shall then be in office shall, at the end of the term of seven years, renew the security by this act required of him, in like manner and to like effect, as afore directed; and it shall be the duty of the Secretary of the Supreme Executive Council to take care, that the Escheator give bond, and renew the same, conformably to the directions of this act, and that the same bond be recorded in the Rolls-office of this commonwealth.

to be taken by the Secretary.

SECT. XIII. *And be it further enacted by the authority aforesaid,* That the fees and reward of the Escheators aforesaid shall be as follow :

For receiving and filing each information, twenty shillings.

For issuing writs or precepts to the Sheriff or Coroner, fifteen shillings.

For filing return, three shillings.

For every *Subpoena* for witnesses (four to be named in each, if so many there be) five shillings and seven-pence.

For calling and attesting the jury of enquiry, and holding, drawing and filing the inquisition, thirty-five shillings.

Attesting each witness, one shilling and six-pence.

For examining witnesses and reducing their testimony to writing, for each line of twelve words, four-pence.

For all copies (besides the certificate) for each line of twelve words, two-pence.

And for a certificate, besides the copy, seven shillings and six-pence.

For drawing a bond to traverse the inquisition, if necessary, seven shillings and six-pence.

For filing the same, three shillings.

The escheator's fees;

Executing every lease and filing the counterpart (the expense of drawing the same to be paid by the lessee) fifteen shillings. 1787.

And that the fees of the Prothonotary, Sheriff, and other officers of the Supreme Court, and jurors and witnesses, shall be the same, as they are entitled to receive for similar services in the same court. and of the other officers, &c.

SECT. XIV. *And be it further enacted by the authority aforesaid,* That in all cases where escheats, for want of heirs or known kindred, have happened, as well previously to the late revolution, as since the same, they, and each of them, shall be enquired of by the Escheator-General, or his deputy, decided upon by like traverse and claim, and under the like limitations of time for making such traverse and claim, exposed to sale, and sold in like manner, as is herein before provided as to escheats for want of heirs, and the monies thence arising shall belong and go, as the same by law would before the publication of this act. Provision respecting escheats antecedent to this act.

SECT. XV. *Provided,* That the brothers or sisters of the half blood, the father, mother, grandfather or grandmother of the person so dying, shall not have any benefit or share of the escheats which have happened heretofore: *Provided also,* That nothing in this act shall affect the claim of any person, who shall be possessed of any escheat which had previously happened as aforesaid, by virtue of an escheat warrant for the re-surveying of any lands that had formerly escheated. Proviso, as to who shall share in such escheats.

SECT. XVI. *Provided nevertheless,* That such escheat warrant, and the survey which hath been made thereon, be returned into the office of the Surveyor-General of this state, within two years from and after the publication of this act, and that the purchase money, together with the interest which shall be due upon the same, be satisfied within one year thereafter, where such survey hath not been duly returned, and satisfaction made for the same land heretofore. Of escheat warrants, and surveys made thereon.

SECT. XVII. *And be it further enacted by the authority aforesaid,* That the proceeding in cases of escheats of lands, and goods and chattels, which shall hereafter accrue to the commonwealth by forfeiture upon attain, shall commence by the issuing of a commission out of the Supreme Court, to the Escheator-General directed, commanding him to enquire concerning the same; whereupon the same Escheator shall send forth his precept to the Sheriff or Coroner, who, thereupon, shall hold an inquest, and return the inquisition, lease, sell and dispose of the personal estate, if any, and the money arising from the same escheats; and the Supreme Court shall allow of traverses and claims (if made under the limitations herein before provided) to such forfeited property, and decide upon the same. direct the sale of real estate, and give relief to those, whose traverses shall succeed, and whose claims be allowed; and the President in Council shall give a deed for any real estate so sold as aforesaid, in like manner and to similar effect, as in the cases of escheats for defect of heirs; and all creditors of any attainted person, who have or shall have a demand of debt, or other demand of a pecuniary nature, upon the estates which were of such offenders respectively, shall be satisfied out of the estate personal and real of the debtors severally; but in case any such estate prove insolvent, the demands aforesaid made upon it, within one year Proceedings in cases of escheats of lands, &c. upon attain.

1787. from the attainder of the offender, shall be paid in an equal and proportionable manner, according to the quantity of the demands, whether the same be yet due and payable, or payable thereafter; and the Justices of the Supreme Court, or any two of them, shall hear and determine upon all and any claims, as last aforesaid, in a summary manner, as to equity shall appertain, and the widow, child, children and kindred of the offender, shall be awarded their respective legal demands upon the estate, which he or she shall forfeit as aforesaid, in like summary manner, upon petition to the Justices of the Supreme Court, made within two years after the attainder of the forfeiting persons, respectively, but not afterwards, by the person or persons who shall be entitled to the same: *Provided*, That no person shall have any share or part of any estate, which shall be escheated by attainder, for discovering the same to the President or Vice-President in Council, unless the President or Vice-President in Council, by proclamation, think fit to offer a reward for such discovery, which reward shall not exceed one half of the monies arising from the same, after all charges and costs be deducted, nor unless the person discovering the same procure the necessary evidence to substantiate the title of the commonwealth thereto, and prosecute the right of the commonwealth to the same with effect. (*h*)

The Escheator to have access to papers and records.

SECT. XVIII. *And be it further enacted by the authority aforesaid*, That the Escheator-General, or his deputies, shall, at all reasonable times, have access to the public papers in the Land-Office, and other public records, free from any cost, charge or fee.

Passed 29th September, 1787.—Recorded in Law Book No. III. page 294.

(*h*) By the 19th section of the 9th article of the constitution, it is declared, that no attainder shall work corruption of blood, nor excepting during the life of the offender, forfeiture of estate to the commonwealth; that the

estates of such persons as shall destroy their own lives shall descend, or vest, as in case of natural death; and if any person shall be killed by casualty, there shall be no forfeiture by reason thereof (*Note to former edition.*)

CHAPTER MCCCVI.

An ACT for incorporating the German Reformed Congregation of Frankford, in the township of Oxford, and county of Philadelphia.

Passed 25th of September, 1787.—Private Act.—Recorded in Law Book No. III. page 263.

CHAPTER MCCCVII.

An ACT for regulating chimney-sweepers, within the city of Philadelphia, the district of Southwark, and township of the Northern-Liberties, in the county of Philadelphia. (i)

SECT. 1. WHEREAS the houses and estates of the inhabitants of the city of Philadelphia, and of the district of Southwark,

(*i*) By a supplement to the act for incorporating the city of Philadelphia (enacted the 2d of April, 1790) the corporation are empowered to regulate the

prices of chimney-sweepers, &c. and an ordinance was passed for that purpose on the 28th of February, 1791. (*Note to former edition.*)

and the township of the Northern-Liberties, in the county of Philadelphia, are frequently endangered by chimnies taking fire, and blazing out at the top, and it is necessary that such abuses should be remedied by law, and a proper regulation made among those who undertake the sweeping of chimnies:

1787.

and page 208,
chap. 333.]

SECT. II. *Be it therefore enacted, and it is hereby enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same, That* no person or persons, from and after the passing of this act, shall follow the business or occupation of a chimney-sweeper, either by himself, his servants, negroes, or others, within the city of Philadelphia, the district of Southwark, or the township of the Northern-Liberties aforesaid, without having first made application to the officer hereinafter directed to be appointed, and having registered, or caused to be registered, his or their name or names, and the name or names of his or their servants, negroes, or other persons aforesaid, with a number affixed to each and every such name in a book, by the said officer to be kept for the purpose, and without procuring and receiving from the said officer a certificate of every such registry, containing the number and the name of every person so entered, under the penalty of ten shillings for every day he shall follow by himself, or cause to be followed by his servants, negroes, or others, the said business, which said certificates the said officer is hereby enjoined and required to make out, under his hand, and to deliver to the person or persons who shall apply for the same; and for every such registry and certificate he shall receive the sum of seven shillings and six-pence, and no more.

Chimney-sweepers to register their names, the same to be numbered and a certificate thereof taken out.

Penalty on transgressing therein.

SECT. III. *And be it further enacted by the authority aforesaid, That* every person following the business aforesaid, within the said city, district and liberties, shall (if he follows the employment himself) wear, or, (if he employs his servants, negroes, or others) cause to be worn, on the front of their caps, in full view, without any concealment, the same figures and numbers, respectively, as shall be so as aforesaid entered in the said book, and contained in his or their respective certificates, and none other, in large figures, not less than two inches in length, to be made of strong durable tin or copper; and that all and every person and persons, who shall follow the said business or employment, by him or themselves, or by his or their servants, negroes or others, not having the said number fixed on his or their cap and caps, and the cap and caps of his and their servants, negroes, and other persons aforesaid, according to the directions aforesaid, or, when fixed, shall wilfully deface or conceal the same, or shall neglect to keep them plain and visible, shall, for each and every such offence, forfeit and pay the sum of ten shillings for every day he or they shall follow the said employment, not wearing the said number as aforesaid.

Chimney-sweepers to wear their numbers on their caps.

Penalty on transgressing therein.

SECT. IV. *And be it further enacted by the authority aforesaid, That* if any person or persons, undertaking the business or occupation aforesaid, shall not, within forty-eight hours, after application to him or them made, by any of the inhabitants of the said city, district, or Northern-Liberties, sweep, or cause to be swept, such chimney or chimnies, as he or they shall be required to sweep, every

Penalty on chimney-sweepers not attending within forty-eight hours after notice.

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such person or persons, so offending, shall forfeit and pay the sum of twenty shillings.

Prices for
sweeping
chimnies.

SECT. V. *And be it further enacted by the authority aforesaid,* That every chimney-sweeper shall have and receive, for every chimney by him swept within the city of Philadelphia, and for every chimney by him swept in the district and liberties aforesaid, not more than one mile distant from the northern and southern boundaries of the said city, as follows; that is to say, for every chimney passing through two stories, or under, nine-pence, for every chimney passing through three stories, one shilling, for every chimney passing through four or more stories, one shilling and six-pence, and no more. (*k*)

Penalty in
case of chim-
nies taking
fire.

SECT. VI. *And be it further enacted by the authority aforesaid,* That if the chimney of any person or persons, within the said city, district or liberties, shall take fire, and blaze out at the top, the same not having been swept within the space of one calendar month next before the time of taking of such fire, every such person or persons shall forfeit and pay the sum of forty shillings; and if any chimney shall take fire, and blaze out at the top, the same having been swept within one calendar month from the time of taking such fire, the person who swept the same, either by himself, his servants, or negroes, shall forfeit and pay the sum of forty shillings.

The register
of chimney-
sweepers,
how to be
appointed.

SECT. VII. And to the end that the regulations by this act prescribed may be executed, *Be it enacted by the authority aforesaid,* That any three of the Justices of the peace of the said city and county, together with the Wardens of the said city, shall appoint the officer for registering and granting certificates to chimney-sweepers, and for collecting of the said fines and forfeitures, who is hereby strictly required to do and perform the several duties of the said office, enjoined by this act.

Appropriation
of fines
and forfeit-
ures.

SECT. VIII. *And be it further enacted by the authority aforesaid,* That all and every the penalties and forfeitures, imposed by virtue of this act, shall be paid, one half thereof to the use of the officer aforesaid, and the other half thereof to the overseers of the poor of the said city, district or township, where the offence shall be committed, for the use of the poor thereof, to be sued for in the name of the officer, and recovered before any Justice of the peace for the said city and county, who is hereby authorized to hear, try, judge and determine the same: *Provided always,* That nothing in this act shall extend, or be construed to extend, to a greater distance than one mile from without the bounds of the city of Philadelphia.

The opera-
tion of the
act limited
in point of
place.

Repeal of
former acts.

SECT. IX. *And be it enacted by the authority aforesaid,* That so much of the act of General Assembly, passed in the year one thousand seven hundred and twenty-one, entitled "An act for preventing accidents that may happen by fire," and of the act of General Assembly, passed in the year one thousand seven hundred and fifty-one, entitled "An act for the more effectual preventing accidents which may happen by fire, and for suppressing idleness, drunkenness, and other debaucheries," as relate to the firing of chimnies

(*k*) The same prices are continued under the ordinance of the 28th of February, 1791. (*Note to former edition.*)

within the said city, and one other act of General Assembly, passed the twenty-first day of March, one thousand seven hundred and seventy-two, entitled "An act for regulating chimney-sweepers, within the city of Philadelphia, the district of Southwark and the township of the Northern-Liberties," shall be, and are hereby, declared to be repealed.

Passed 29th September, 1787.—Recorded in Law Book No. III. page 247.

CHAPTER MCCCX.

An ACT to appoint commissioners to regulate the streets, lanes and alleys, in the district of Southwark, and to lay out new streets, lanes and alleys therein, for the accommodation of the inhabitants, and to lay out the roads therein mentioned, through the said district and parts of the townships of Moyamensing and Passyunk.

SECT. I. WHEREAS the district of Southwark has become populous, and the freeholders thereof are daily erecting buildings, and making improvements therein, but for want of a public and general regulation of the streets, lanes and alleys, they are irregularly placed, and there is danger that in time they will become a heap of confused buildings, without order or design, unless a remedy be speedily applied: And whereas it is highly necessary that every town, or part of a town, should have a direct and convenient communication with the country, in order to an easy exchange of the necessaries of life with each other, and there is no road from the district of Southwark to the surrounding country, but what is circuitous and inconvenient:

[See vol. 1, pa. 248, chap. 481.]

SECT. II. *Be it therefore enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same, That Francis Gurney, Richard Wells, Presley Blackiston, Thomas Shields, and Gunning Bedford, be, and they are hereby, appointed commissioners, for the purposes in this act contained, and they, or any three of them, shall have full power and authority to do and perform all and every the matters and things herein mentioned and contained by the commissioners to be performed, and that in case of the death, resignation or inability of any or either of the said commissioners, it shall and may be lawful for the Supreme Executive Council of this commonwealth to appoint another or other proper and judicious person or persons, to supply his or their places, from time to time, until the end of this act shall be fully answered, which person or persons, so to be appointed, shall have the same powers, as if he or they were named in this act.*

Commissioners appointed to regulate the streets in Southwark, &c.

SECT. III. *And be it further enacted by the authority aforesaid, That the said commissioners, before they take upon themselves the duties required by this act, shall take and subscribe, before one of the Judges of the Supreme Court, or Court of Common Pleas for the county of Philadelphia, an oath or affirmation, that they will well and faithfully execute the duties required by this act, ac-*

They shall take an oath of office.

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ording to the best of their judgment and abilities, without favour or partiality.

Their power to survey and lay out the streets in Southwark,

SECT. IV. *And be it further enacted by the authority aforesaid,* That the said commissioners, or any three of them, so qualified as aforesaid, shall have full power and authority to survey and lay out such and so many new streets, lanes and alleys, within that part of the district of Southwark, where proper streets, lanes and alleys are not already laid out, as in the best of their judgment will be necessary to accommodate all the inhabitants and land-holders with convenient ways and passages, to and from their respective grounds, laying the same at, or as near to, right angles with each other, as the nature of the place and a reasonable conformity to the streets, lanes and alleys, already established and built upon, will admit.

Their power to lay out roads from the Lower Ferry to the central part of Southwark; and from that centre to the State-Island ferry.

SECT. V. *And be it further enacted by the authority aforesaid,* That the said commissioners shall have full power and authority to survey and lay out a public road or highway from George Gray's, commonly called the Lower Ferry, to run as nearly in a right line, and as nearly parallel to the south street of the city of Philadelphia, as the ground, and other circumstances, will reasonably admit, across the isthmus, into some central part of the district of Southwark, and to survey and lay out one other road, leading, in the most direct manner that the nature of the ground will reasonably admit, from some central part or street of the said district, through the same, and the townships of Moyamensing and Passyunk, to the State-Island ferry; and the said commissioners shall make, or cause to be made, a correct draft or plan of all the said streets, lanes, alleys and roads, so by them to be laid out, and return the same, under their hands to the Supreme Executive Council, who are hereby authorized and empowered to examine the same, and, after hearing the objections of any land-holders, who may think themselves aggrieved, shall adjudge and determine how many and which of the said streets, lanes, alleys and roads, shall be public streets, lanes, alleys and high-roads, and shall direct the said plan, together with their adjudication thereupon, to be recorded in the office for recording of deeds for the county of Philadelphia, and from thenceforth all the said streets, lanes, alleys and roads, so adjudged, shall be for ever hereafter deemed, adjudged and taken, to be public highways, for the use of the inhabitants of this state.

Plans and returns to be made to the executive, who shall decide thereon;

and the same when recorded, shall be deemed highways.

Proceedings in future, to open any of the said streets or roads.

SECT. VI. And whereas the public convenience will be for the present answered by the certain knowledge, where, and in what manner, such streets, lanes, alleys and roads will in future run, but it will not be necessary immediately to lay all of them open: In order therefore to provide for the opening of the same from time to time, as the increasing improvements shall require, *Be it hereby further enacted by the authority aforesaid,* That, upon the petition of any number of freeholders of the said district and townships, not less than seven, whose lands lie near or adjoining to such streets, lanes, alleys or roads, to open any one or more of the said streets, lanes, alleys or roads, it shall and may be lawful to and for the Supreme Executive Council, after hearing the petitioners, and such other freeholders through whose land such road or street shall pass, as shall offer objections thereto, to determine whether it be proper at

the time to open such street or road; and if they shall be of opinion that the state of improvement in the neighbourhood thereof shall require it, they shall issue their warrant, under the hand of the President or Vice-President, and the less seal of the state, directed to the supervisors of the streets or highways within the district or township, through which the same is to pass, requiring and enjoining them to open such street or road, and to cause the same to be put in order and kept in repair in the same manner, as other streets or roads within the same district or township are by law to be opened, repaired and maintained.

SECT. VII. *And be it further enacted by the authority aforesaid,* That if the owner or owners of any of the grounds, through and over which any of the streets, lanes, alleys or roads, so to be opened, shall pass, shall so require, the Supreme Executive Council of this commonwealth shall issue their precept, under the hand of the President or Vice-President, and the less seal of the state, to the Sheriff of the county of Philadelphia directed, in the nature of a writ of enquiry, commanding him, that by the oaths or affirmations of twelve good and lawful men of his bailiwick, not having any real estate in said district or townships, he shall enquire what damages such owner or owners will sustain in his or their improvements, made before the laying out of such street, lane, alley or road, so applied for to be opened; and upon the return of such enquiry, the Supreme Executive Council shall make an order or orders on the supervisors of said district or township, in favour of the person or persons whose improvements shall be found to be injured, for such sum or sums as the said injuries shall be found to amount to, and shall direct the supervisors aforesaid to stay the opening such street, lane, alley or road, until the said last mentioned order be fully paid and satisfied.

Owners of lands through which the streets or roads pass, how to be indemnified.

SECT. VIII. *And be it further enacted by the authority aforesaid,* That the said commissioners shall be allowed the sum of ten shillings each, for each and every day they shall be employed in the performance of the duties by this act required, and the sum of seven shillings and six-pence per day for a Clerk or Secretary, to assist them in managing and transcribing their proceedings in the business aforesaid, and their reasonable costs and charges, in procuring the surveys and drafts herein above directed to be made.

Compensation of the Commissioners, and their clerk.

SECT. IX. *And be it further enacted by the authority aforesaid,* That the said commissioners, having first settled their accounts with one of the Justices of the Peace elected in the district, consisting of the district of Southwark and townships of Moyamensing and Passyunk, shall be entitled to draw orders on the collectors of the road tax for the said district and townships, respectively, for such proportionable parts of the expenses and allowances to them accruing, as, in the judgment of the said commissioners, the said townships and district ought reasonably to pay, and the several collectors of the road taxes in and for the said district and townships are hereby, respectively, enjoined and required to pay the amount of such orders, and the same shall be allowed to the said collectors in the settlement of their accounts.

Their accounts being settled, how the expense shall be apportioned.

1787. **SECT. X.** *And be it further enacted by the authority aforesaid,* That the damages which shall be found to be sustained by any person or persons in their improvements, by means of opening any of the streets, lanes, alleys or roads aforesaid, shall be paid by the supervisors of the said streets, lanes, alleys or roads, within the district or township in which the same shall be, out of any monies in their hands raised by and upon the inhabitants thereof.

Passed 29th September, 1787.—Recorded in Law Book No. III. page 258.

CHAPTER MCCCXII.

An ACT to enable the sheriff and Justices of the peace for the county of Luzerne to confine prisoners in the common gaol of the county of Northampton, and to empower the commissioners to run the line from the mouth of Nescopeck creek, dividing the county of Northumberland from the county of Luzerne and for other purposes therein mentioned.

[See the note to chap. 1233 ante. pa. 386.]
[* Chap. 1245.]

Boundary line of Luzerne ascertained.

SECT. IV. AND whereas it appears, by the Supplement to the act, entitled “An act for the erecting the northern part of the county of Northumberland into a separate county*,” that the line from the mouth of Nescopeck shall be run northwestwardly, until it intersects the line which divides the waters of the east branch of the Susquehanna river from those of the west branch thereof, which term being indefinite: *Be it therefore enacted by the authority aforesaid,* That the said line from the mouth of the Nescopeck shall run north, one degree west, until it intersects the line which divides the waters of the east branch of the Susquehanna river from those of the west branch thereof.

Passed 29th September, 1787.—Recorded in Law Book No. III. page 243. (The rest of this act is obsolete.)

CHAPTER MCCCXIV.

An ACT to incorporate the Presbyterian congregation of the town of Pittsburgh, and the vicinity thereof, in the county of Westmoreland.

Passed 29th September, 1787.—Private Act.—Recorded in Law Book No. III. page 256.

A C T S

OF THE

General Assembly of Pennsylvania.

Passed in the twelfth General Assembly of the Commonwealth, in which were held three Sessions.—The first commencing the 22d day of October, and ending the 29th day of November, 1787. The second commencing the 19th day of February, and ending the 29th day of March, 1788. And the third commencing the 2d day of September, and ending the 4th day of October, 1788.

THOMAS MIFFLIN, SPEAKER.

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CHAPTER MCCCXX.

An ACT for vesting the public store-house and two lots of ground, in the borough and county of Lancaster, in the trustees of Franklin college, for the use of the said institution. [Antepa. 398, chap. 1263.]

Passed 27th of February, 1788.—Private Act.—Recorded in Law Book No. III. page 337.

CHAPTER MCCCXXI.

An ACT to incorporate the society for propagating the gospel among the Heathen, formed by members of the Episcopal church of the United Brethren, or Unitas Fratrum. (1)

Passed 27th of February, 1788.—Private Act.—Recorded in Law Book No. III. page 358.

(1) A grant of 5000 acres of land was made to the society, by an act of the 9th of April, 1791. (Note to former edition.)

CHAPTER MCCCXXII.

An ACT to incorporate the first Presbyterian congregation of the Big-Spring, in Newtown township, in Cumberland county.

Passed 27th of February, 1788.—Private Act.—Recorded in Law Book, No. III. page 354.

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CHAPTER MCCCXXIV.

An ACT for erecting a certain district of country, in which the Court-house in Chester county stands, into a county town. (o)

[See ante.
pa. chap. 93,
1070.]

SECT. I. WHEREAS a number of the inhabitants of Chester county have petitioned this House that a certain district of country, in which the Court-house of the said county stands, may be erected into a county town, and that the inhabitants of the said town may be entitled to a like number of Justices of the peace with other county towns, and it appearing that the public convenience will thereby be promoted :

SECT. II. *Be it therefore enacted, and it is hereby enacted, by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same, That* a certain district of country within the county aforesaid, bounded as follows, viz. beginning at the line which divides the townships of East-Bradford and Goshen, at the corner of the lands of Charles Ryan and John Darlington; thence along the lines of the said Charles Ryan, and the lands late of Thomas Williamson, of Gideon Williamson, and of Thomas Darlington, junior, to the lands of George Matlock; thence along the lines of the lands of George Matlock, William Sharpless, Jonathan Matlock and John Patton, to a line of the land of Doctor Joseph Moore; thence to the line of the land of Isaiah Matlock; thence along the lines of the said Isaiah Matlock's land, and of the lands of Doctor Joseph Moore and Thomas Hoops, to the road called the Goshen-street; thence along the said street to the land of Benaniel Ogden, being the line which divides the township of East-Bradford, from the township of Goshen, and from thence to the place of beginning, be, and hereby is, erected into and constituted the county town of and for the said county of Chester, by the name and title of "West Chester," and is hereby invested with and entitled to all the rights, privileges, immunities and advantages of a county town within this commonwealth.

The County town of West-Chester erected, and its boundaries described.

Passed 3d March, 1788.—Recorded in Law Book No. III. page 338.

(o) For several acts respecting Chester, see chap. 1070. (*Note to former edition*)

CHAPTER MCCCXXV.

An ACT to enable the commissioners of the county of Chester to sell and convey a certain lot of land in the township of East-Caln, and county aforesaid, for the use of the said county.

SECT. I. [THE Commissioners of Chester empowered to sell a certain public lot, which had been purchased for the erection of a Court-house and Prison for the use of the county: but the public buildings having been erected in another place, the commissioners were authorized to sell, and convey to the purchaser.]

Passed 3d March, 1788. (Obsolete.)—Recorded in Law Book No. III, page 338

CHAPTER MCCCXXVI.

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An ACT to enable the owners and possessors of a certain tract of marsh and meadow land, therein described, situate in the counties of Philadelphia and Chester, to keep the banks, dams, sluices and flood-gates in repair, and to raise a fund to defray the expense thereof.

Passed 10th of March, 1788.—Private Act.—Recorded in Law Book No. III.
page 341.

CHAPTER MCCCXXVII.

An ACT to incorporate and endow an academy or public school in the borough of Reading, in the county of Berks.

[2000 dollars granted to this seminary by act of 11th of March, 1807, chap. 2767.]

Passed 10th March, 1788.—Private Act.—Recorded in Law Book No. III
page 348.

CHAPTER MCCCXXX.

A SUPPLEMENT to the act, entitled "An act for regulating the measurement of corn and salt, imported into the port of Philadelphia."

[Ante, p. 350, chap. 1132.]

SECT. I. WHEREAS large quantities of coal are imported or brought into the port and city of Philadelphia for sale, in the measurement whereof frequent disputes arise:

SECT. II. *Be it therefore enacted, and it is hereby enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same,* That the measurer of corn and salt, imported or brought into the port and city of Philadelphia for sale, shall be the measurer of all coal imported or brought into the said port and city of Philadelphia for sale; and that the said measurer shall, at his own cost, provide a sufficient number of two bushel tub measures, and have the same compared with, and regulated by, the public standard measure kept in the city of Philadelphia, and shall have the same powers, and be subject to the same rules, regulations and penalties, as are by the said act directed for the measurement of corn and salt, imported into the city and port of Philadelphia.

The measurer of corn and salt to be measurer of coals.

SECT. III. *And be it further enacted by the authority aforesaid,* That the allowance for measurement of coal imported into the city and port of Philadelphia shall be at the rate of one shilling for every hundred bushels, to be paid by the buyers, and one shilling for every hundred bushels, to be paid by the sellers, who shall cause the same to be filled into the measures, and no more.

Compensation for his services,

And whereas considerable quantities of lime are from time to time imported and brought into the city of Philadelphia, the district of Southwark, and township of the Northern Liberties, and disputes concerning the admeasurement thereof frequently occur:

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The same person to be measurer of lime, in cases of dispute.

How to be paid for such service.

SECT. IV. *Be it therefore enacted, and it is hereby enacted by the authority aforesaid,* That in case any dispute shall hereafter arise respecting the admeasurement of lime imported or brought for sale into the said city of Philadelphia, or parts adjacent thereto, within one mile from the court-house in the said city, the same shall be determined by the measurer herein before appointed for corn, salt and coals, who is hereby authorized and empowered to measure, according to the usual and proper mode of measuring that article, all lime, concerning the admeasurement whereof disputes may happen, at the instance of either of the parties, between whom such dispute or difference may arise; and the said measurer shall be paid by the party who shall be found by the said measurer in the wrong in such dispute or difference, the sum of one penny for every bushel so measured, and the determination of the said measurer in the premises shall be final between the parties.

Passed 28th March, 1788.—Recorded in Law Book No. III. page 361.

CHAPTER MCCCXXXI.

An ACT for opening and establishing certain roads in the counties of Northampton and Luzerne.

SECT. I. WHEREAS the opening of roads through the unsettled parts of this state will greatly promote its settlement and population, and encrease its domestic and foreign commerce, its manufactures and agriculture; and divers persons, citizens of this state, have already subscribed considerable sums of money, and divers other persons are disposed to subscribe further sums for the purpose of opening roads from Pocona Point, in the county of Northampton, to a place known by the name of Mount Arrarat, and thence to the New-York line, at the intended carrying-place between the rivers Susquehanna and Delaware, as also from the said Mount Arrarat to the most proper place at or near the mouth of the river Tioga: And whereas the said roads will conduce to the immediate settlement of an extensive tract of country, will promote both the export and Indian trade of this state, and, by communication with other roads already begun, will render Pennsylvania the most eligible route for the emigrants from the northern and eastern parts of the United States: And whereas it is just and proper, that such important efforts of private citizens of this commonwealth, and which tend to encrease the general wealth and power of the state, should be patronized and assisted by the Legislature thereof:

SECT. II. *Be it therefore enacted, and it is hereby enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same,*

Courses of certain roads to be laid out in the counties of Northampton and Luzerne.

That the roads aforesaid shall be laid out and opened, as nearly as conveniently may be, in the following directions, that is to say; one of the said roads shall begin at or near to Pocona Point, in the county of Northampton, and shall run from thence, as shall appear most proper in the opinion of the commissioners to be appointed as hereinafter mentioned, to or near to a place in the said county,

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known by the name of Mount Arrarat; another of the said roads shall be run from and at the termination of the road aforesaid, at or near Mount Arrarat, to such a point in the line dividing the state of New-York from this state, and lying between the rivers Susquehanna and Delaware, as shall be deemed most proper by the said commissioners; and the last of the said three roads shall run from (or as near as may be from) the said Mount Arrarat to the most proper place, in the opinion of the said commissioners, at or near the mouth of the river Tioga; and each of the said roads shall be laid out sixty feet wide.

SECT. III. [Commissioners to be appointed to lay out the said roads, and to report to the executive; and the roads, when established, shall be deemed highways; and the courses and distances shall be entered in the Council books, which entry shall be deemed a record thereof.]

SECT. IV. [One thousand pounds appropriated for the purposes of this act.]

SECT. V. [The commissioners, if required, to give security.]

Commissioners were appointed on the 3d of April, 1788, and they were required to give security. Minutes of Council, vol. 8, page 271.

Passed 28th March, 1788.—Recorded in Law Book No. III. page 363.

CHAPTER MCCCXXXIV.

An ACT to explain and amend an act, entitled "An act for the gradual abolition of slavery."

SECT. I. **FOR** preventing many evils and abuses arising from ill disposed persons availing themselves of certain defects in the act for the gradual abolition of slavery, passed on the first day of March, in the year of our Lord one thousand seven hundred and eighty,

[See vol. 1, pa. 492, chap. 870, and the notes thereto subjoined.]

SECT. II. *Be it enacted, and it is hereby enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same,* That the exception contained in the tenth section of the aforesaid act, relative to domestic slaves attending upon persons passing through or sojourning in this state, and not becoming resident therein, shall not be deemed or taken to extend to the slaves of such persons as are inhabitants of or resident in this state, or who shall come here with an intention to settle and reside, but that all and every slave and slaves who shall be brought into this state, by persons inhabiting or residing therein, or intending to inhabit or reside therein, shall be immediately considered, deemed and taken to be free, to all intents and purposes.

Slaves brought into the state by persons intending to reside therein shall be deemed free.

SECT. III. *And be it further enacted by the authority aforesaid,* That no negro or mulatto slave, or servant for term of years, (except as in the last exception of the tenth section of the said act is excepted,) shall be removed out of this state, with the design and intention that the place of abode or residence of such slave or ser-

Slaves, or servants for term of years, not to be removed out of the state without their con-

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sent, testified by two Justices.

vant shall be thereby altered or changed, or with the design and intention that such slave or servant, if a female, and pregnant, shall be detained and kept out of this state till her delivery of the child of which she is or shall be pregnant, or with the design and intention that such slave or servant shall be brought again into this state, after the expiration of six months from the time of such slave or servant having been first brought into this state, without his or her consent, if of full age, testified upon a private examination, before two Justices of the Peace of the city or county in which he or she shall reside, or being under the age of twenty-one years, without his or her consent, testified in manner aforesaid, and also without the consent of his or her parents, if any such there be, to be testified in like manner aforesaid, whereof the said Justices, or one of them, shall make a record, and deliver to the said slave or servant a copy thereof, containing the name, age, condition, and then place of abode, of such slave or servant, the reason of such removal, and the place to which he or she is about to go. And if any person or persons whatever shall sell or dispose of any such slave or servant, to any person out of this state, or shall send or carry, or cause to be sent or carried, any such slave or servant out of this state, for any of the purposes aforesaid, whereby such slave or servant would lose those benefits and privileges, which by the laws of this state are secured to him or her, and shall not have obtained all such consent as by this act is required, testified in the manner before mentioned, every such person and persons, his and their aiders and abettors, shall severally forfeit and pay, for every such offence, the sum of seventy-five pounds, to be recovered in any court of record, by action of debt, bill, plaint or information, at the suit of any person who will sue for the same, one moiety thereof, when recovered, for the use of the plaintiff, the other moiety for the use of the poor of the city, township or place, from which such slave or servant shall be taken and removed.

Penalty on selling or sending slaves or servants out of the state.

Persons possessed of children liable to serve till 28 years old shall make entry thereof with the Clerk of the Peace.

Form of the entry.

SECT. IV. *And be it further enacted by the authority aforesaid,* That all persons who now are, or hereafter shall be possessed of any child or children, born after the first day of March, one thousand seven hundred and eighty, who would by the said act be liable to serve till the age of twenty-eight years, shall, on or before the first day of April, one thousand seven hundred and eighty-nine, or within six months next after the birth of any such child, deliver, or cause to be delivered, in writing, to the Clerk of the Peace of the county, or the Clerk of the Court of Record of the city of Philadelphia, in which they shall respectively inhabit, the name, surname and occupation or profession of such possessor, and of the county, township, district or ward, in which they reside, and also the age, (to the best of his or her knowledge,) name and sex of every such child or children, under the pain and penalty of forfeiting and losing all right and title to every such child and children, and of him, her or them immediately becoming free, which said return or account in writing shall be verified by the oath or affirmation of the party, which the said Clerks are hereby respectively authorized and required to administer, and the said Clerks shall make and preserve records thereof, copies and extracts of which shall be good evi-

dence in all courts of justice, when certified under their hands and seals of office. For which oath or affirmation, and entry or extract, the said Clerks shall be respectively entitled to one shilling and sixpence, and no more, to be paid by him or her, who shall so as aforesaid make such entry or demand the extract aforesaid.

1788.

And whereas it has been represented to this House, that vessels have been fitted out and equipped in this port, for the iniquitous purpose of receiving and transporting the natives of Africa to places where they are held in bondage, and it is just and proper to discourage, as far as is practicable, such proceedings in future :

SECT. v. *Be it therefore enacted, and it is hereby enacted by the authority aforesaid,* That if any person or persons shall build, fit, equip, man, or otherwise prepare any ship or vessel, within any port of this state, or shall cause any ship or other vessel to sail from any port of this state, for the purpose of carrying on a trade or traffic in slaves, to, from, or between Europe, Asia, Africa or America, or any places or countries whatever, or of transporting slaves to or from one port or place to another, in any part or parts of the world, such ship or vessel, her tackle, furniture, apparel, and other appurtenances, shall be forfeited to the commonwealth, and shall be liable to be seized and prosecuted by any officer of the customs, or other person, by information *in rem* in the Supreme Court, or the county court of Common Pleas for the county wherein such seizure shall be made, whereupon such proceedings shall be had, both unto and after judgment, as in and by the impost laws of this commonwealth, in cases of seizures, is directed. And, moreover, all and every person and persons so building, fitting out, manning, equipping, or otherwise preparing or sending away, any ship or vessel, knowing or intending that the same shall be employed in such trade or business, contrary to the true intent and meaning of this act, or any wise aiding or abetting therein, shall severally forfeit and pay the sum of one thousand pounds, one moiety thereof to the use of the commonwealth, and the other moiety thereof to the use of him or her who will sue for the same, by action of debt, bill, plaint, or information.

Vessels employed in the slave trade liable to forfeiture.

Penalty on building and equipping them for such trade.

And whereas the practice of separating, which is too often exercised by the masters and mistresses of negro and mulatto slaves, or servants for term of years, in separating husbands and wives, and parents and children, requires to be checked, so far as the same may be done without prejudice to such masters or mistresses :

SECT. VI. *Be it enacted by the authority aforesaid,* That if any owner or possessor of any negro or mulatto slave or slaves, or servant or servants for term of years, shall from and after the first day of June next, separate or remove, or cause to be separated or removed, a husband from his wife, a wife from her husband, a child from his or her parent, or a parent from a child, of any or either of the descriptions aforesaid, to a greater distance than ten miles, with the design and intention of changing the habitation or place of abode of such husband or wife, parent or child, unless such child shall be above the age of four years, or unless the consent of such slave or servant for life or years shall have been obtained, and testified in the manner herein before described, such person or persons shall seve-

Slaves, or servants for term of years, not to be separated from their parents, &c.

1788. *rally forfeit and pay the sum of fifty pounds, with costs of suit, for every such offence, to be recovered by action of debt, bill, plaint or information, in the Supreme Court, or in any court of Common Pleas, at the suit of any person who will sue for the same, one moiety thereof, when recovered, for the use of the plaintiff, the other moiety for the use of the poor of the city, township or place, from which such husband or wife, parent or child, shall have been taken and removed.*

Penalty on
forebly carry-
ing off a
slave or ser-
vant for
term of
years.

SECT. VII. *And be it further enacted by the authority aforesaid, That if any person or persons shall, from and after the passing of this act, by force or violence, take and carry, or cause to be taken and carried, or shall by fraud seduce, or cause to be seduced, any negro or mulatto, from any part or parts of this state, to any other place or places whatsoever, with a design and intention of selling and disposing, or of causing to be sold, or of keeping and detaining, or of causing so to be, as a slave, or servant for term of years, every such person and persons, their aiders and abettors, shall on conviction thereof in any court of Quarter Sessions for any city or county within this commonwealth, forfeit and pay the sum of one hundred pounds to the overseers of the poor of the city or township, from which such negro or mulatto shall have been taken or seduced as aforesaid, and shall also be confined at hard labour for any time not less than six months, nor more than twelve months, and until the costs of prosecution shall be paid.*

This act to
be publicly
read,
[Obsolete.]

[SECT. VIII. *And be it further enacted by the authority aforesaid, That the justices of the courts of Common Pleas for the counties of this state, respectively, be, and they are hereby required and enjoined to cause this act to be publicly read, at least twice in each term, for the two terms next following the passing of this act.*]

Passed 29th March, 1788.—Recorded in Law Book No. III. page 370.

CHAPTER MCCCXXXVII.

An ACT for facilitating the redemption of the bills of credit, emitted in the year one thousand seven hundred and eighty-one, and for redeeming part of the funded debt of this state, for extending the time for patenting lands which were located before the declaration of independency, and for giving a right of pre-emption to actual settlers, for procuring warrants for lands by them occupied.

[See ante.
page 102,
chap. 1083,
and the notes
thereto sub-
joined.]
[This act is
obsolete, but
is retained as
part of the
history of
the Land-Of-
fice.]

SECT. I. WHEREAS, in and by an act of General Assembly of this commonwealth, passed the twenty-eighth day of March, in the year of our Lord one thousand seven hundred and eighty-seven, entitled "An act for facilitating the redemption of the bills of credit, emitted in the year one thousand seven hundred and eighty-one, and for redeeming part of the funded debt of this state, by the speedy collection of the arrearages due for unpatented lands, which were located before the declaration of independency;" wherein it is enacted, that if any person entitled to lands within this state, and yet remaining unpatented, shall refuse or neglect to pay or secure

the purchase money, or arrearages thereof, with interest, every such person, so refusing or neglecting, shall be barred and precluded from all the benefit intended by this act, with respect to further time of payment, and the mode of such payment, and shall be forthwith prosecuted and proceeded against by the sale of his said lands according to law, as if this act had not been made: 1788.

And whereas the before recited act, by its own limitation, expires the tenth day of April next within which time so limited the citizens cannot obtain a confirmation of their grants, it is therefore deemed expedient further to extend the same:

SECT. II. *Be it therefore enacted, and it is hereby enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same,* That the time limited in the act above recited for paying or securing to the state the payments for lands held or claimed by any citizen of this commonwealth by location, or any other office right, obtained before the tenth day of December, one thousand seven hundred and seventy-six, and yet remaining unpatented, be, and hereby is extended, to every matter and thing contained in the act aforesaid, to the tenth day of April, in the year of our Lord one thousand seven hundred and eighty-nine. Period for patenting certain lands extended.

SECT. III. *And be it further enacted by the authority aforesaid,* That every person entitled to demand a patent for land in this state, on paying one fourth part of the amount of the purchase money now due, with the interest thereon, in lawful money of this state, or in the bills of credit emitted by virtue of an act passed the seventh day of April, one thousand seven hundred and eighty-one, together with the whole of the office fees, in current lawful money, shall, at his option, pay the residue of such purchase money and interest in lawful money, or bills of credit aforesaid, or in funded certificates of this state, on which certificates the interest shall be computed and allowed till the time of such payment. The purchase money how to be paid;

Provided nevertheless, That such payment or payments be made and completed before the tenth day of April, in the year of our Lord one thousand seven hundred and eighty-nine. and when completed.

And whereas, by an act passed the thirtieth day of December, in the year of our Lord one thousand seven hundred and eighty-six, entitled "An Act for giving, during a limited time, a right of pre-emption to the actual settlers within this state;" and as said act, by its own limitation, will expire the tenth day of April next, and as it is deemed just and reasonable that the actual settlers within this state, who have not procured warrants for the lands by them occupied, should be allowed longer time for completing the same.

SECT. IV. *Be it enacted by the authority aforesaid,* That the act above recited, be, and hereby is extended, in every matter and thing, to the tenth day of April, in the year of our Lord one thousand seven hundred and eighty-nine, any thing in the said act to the contrary notwithstanding. The period of pre-emption extended.

1788.

CHAPTER MCCCXLII.

An ACT to incorporate the members of the religious society of Roman Catholics belonging to the congregation of St. Mary's Church, in the city of Philadelphia.

Passed 13th September, 1788.—Private Act.—Recorded in Law Book No. III. page 378.

CHAPTER MCCCXLIV.

An ACT to incorporate the Presbyterian Church of Middle Octara-ra, in Bart township, in the county of Lancaster.

Passed 20th September, 1788.—Private Act.—Recorded in Law Book No. III. page 381.

CHAPTER MCCCXLVIII.

An ACT for erecting certain parts of the counties of Westmoreland and Washington into a separate county.

SECT. I. WHEREAS the inhabitants of those parts of the counties of Westmoreland and Washington, which lie most convenient to the town of Pittsburg, have, by petition, set forth, that they have been long subject to many inconveniences, from their being situated at so great a distance from the seat of judicature in their respective counties, and that they conceive their interest and happiness would be greatly promoted by being erected into a separate county, comprehending the town of Pittsburg; and as it appears just that they should be relieved in the premises, and gratified in their reasonable request:

SECT. II. *Be it enacted, and it is hereby enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same, That all those parts of Westmoreland and Washington counties, lying within the limits and bounds hereinafter described, shall be, and hereby are, erected into a separate county; that is to say, beginning at the mouth of Flaherty's run, on the south side of the Ohio river; from thence, by a straight line, to the plantation on which Joseph Scott, Esquire, now lives, on Montour's run, to include the same; from thence, by a straight line, to the mouth of Miller's run, on Chartier's creek; thence, by a straight line, to the mouth of Perry's mill run, on the east side of Monongahela river; thence, up the said river, to the mouth of Becket's run; thence, by a straight line, to the mouth of Sewickly creek, on Youghiogony river; thence, down the said river, to the mouth of Crawford's run; thence, by a straight line, to the mouth of Brush creek, on Turtle creek; thence, up Turtle creek, to the main fork thereof; thence, by a northerly line, until it strikes Puckety's creek; thence, down the said creek, to the Allegheny river; thence, up the Allegheny river, to the northern boundary of the state; thence, along the same, to the western line of the state; thence, along the same, to the river Ohio; and thence, up the same, to the place of beginning; to be henceforth known and called by the name of Allegheny county.*

Allegheny
county
erected, and
its bound-
aries des-
cribed.

[SECT. III. *And be it further enacted by the authority aforesaid,* 1788.
That the inhabitants of the said county of Allegheny shall, under the limitation hereafter mentioned, at all times hereafter, enjoy all and singular the jurisdictions, powers, rights, liberties and privileges whatsoever, which the inhabitants of any other county of this state do, may, or ought to enjoy, by the constitution and laws of this state.

Privileges of the new county.

SECT. VI. *And be it further enacted by the authority aforesaid,* Jurisdiction of the Supreme Court in Allegheny;
That the Justices of the Supreme Court, and the Justices of Oyer and Terminer and General Gaol Delivery of this state, shall have like powers, jurisdictions and authorities, in the said county, as in the other counties of this state, and are hereby authorized and empowered to deliver the gaols of the said county of capital and other offenders, in like manner as they are authorized to do in the other counties of this state.

SECT. VII. *And be it further enacted by the authority aforesaid,* and of the Quarter Sessions, Common Pleas and Orphans Courts.
That the Justices of the courts of Quarter Sessions and Common Pleas now commissioned within the limits of the said county, and those that may hereafter be commissioned, or any three of them, shall and may hold courts of General Quarter Sessions of the peace and Gaol Delivery, and courts of Common Pleas, and shall have all and singular such powers, rights, privileges, jurisdictions and authorities, to all intents and purposes, as other Justices of the courts of General Quarter Sessions and Justices of the Common Pleas, in other counties of this state, may, can, or ought to have in their respective counties; which courts shall sit and be held for the said county (until the trustees herein after appointed shall have erected a court-house, agreeably to the directions of this act) in the town of Pittsburg, four times in each and every year, on the Tuesdays next preceding the county courts of Fayette county; and the court of Quarter Sessions shall sit three days in each session, if occasion be, and no longer; and also that Orphans' Courts in and for the said county of Allegheny shall be held in such manner, and shall have such powers, authorities and jurisdictions, as are by the laws and constitution of this commonwealth, provided as to the Orphan Courts of any county or counties within this commonwealth.

[This section is altered by the existing constitution.]

SECT. XII. *And be it further enacted by the authority aforesaid,* The usual bail to be given by the county officers.
That the Sheriffs, Treasurers, Collectors of the excise, and all such officers, as have heretofore usually given bail for the faithful discharge of their respective offices, who may hereafter be appointed or elected in the said county of Allegheny, before they, or any of them, shall enter upon the execution of their respective offices, shall give sufficient security, in the like sums, in the like manner and form, and for the like uses, trusts and purposes, as such officers are obliged by law, for the time being, to do in the counties of Westmoreland and Washington.

Passed 24th September, 1788.—Recorded in Law Book No. III. page 412. (n)

(n) The sections omitted in this act are,

§ 4. A temporary provision respecting the general elections in Allegheny county.

§ 5. Apportioning the representation between Westmoreland, Washington and Allegheny counties.

§ 8. Trustees of the public buildings to choose lots in the reserved tract op-

1788. } posite Pittsburg, to erect a court-house on. (Repealed by act of 13th of April, 1791, (chap. 1566,) and the public buildings to be erected at Pittsburg.)

§ 9. Providing for levying money to erect the public buildings.

§ 10. Suits in Westmoreland and Washington counties not to be discontinued, but to proceed in the original counties respectively.

§ 11. County officers to act until similar ones chosen in the new county; and arrearages of taxes to be paid, as if this act had not passed.

§ 13. Commissioners appointed to run boundary lines.

By act of 17th of September, 1789, (chap. 1424,) all that part of Washington county, viz. Beginning at the river Ohio, where the boundary line of the state crosses the said river, from thence in a straight line to White's mill, on Raccoon creek, from thence by a straight line to Armstrong's mill, on Miller's run, and from thence by a straight line to the Monongahela river, opposite the mouth of Perry's run, where it strikes the present line of Allegheny county, is annexed to the said county.

By the 14th section of the act for the sale of the vacant lands of the commonwealth, of 3d of April 1792, (chap. 1613,) all the lands within the triangle on Lake Erie, purchased from the United States, were declared to be part of Allegheny county. Allegheny was reduced to its present boundaries by the erection of *Beaver, Butler, Mercer, Crawford, Erie, Warren, Venango and Armstrong* counties, by act of 12th of March, 1800, (chap. 2119.)

By the last enumeration, the counties of *Allegheny* and *Butler*, were found to contain, together, 5,468 taxables, viz. *Allegheny* 4,024 and *Butler* 1,444. And those two counties, united with *Beaver*, 7,405, and by the act to apportion the representation in pursuance thereof, passed 21st of March, 1808, (chap. 2931.) *Allegheny* and *Butler*, united, send four members to the house of representatives, and *Allegheny, Beaver* and *Butler*, send two members to the senate.

There having been only one election district, at Pittsburg, the second and third election districts of Allegheny county, were established by act of 29th of September, 1789, (chap. 1444, § 2, 3.)

The 4th election district was established by act of 30th of September, 1791 (chap. 1579, § 6.)

A new district erected by act of 13th of April, 1795, (chap. 1820.)

Two additional districts established

by act of 21st of March, 1797, (chap. 1922.)

Three additional districts established by act of 4th of April, 1798, (chap. 1994, § 4, 5.)

Eight additional districts established by acts of 8th of April, 1799, (chap. 2049, 2050.)

By the reduction of the boundaries of *Allegheny*, when eight new counties were erected, the election districts would of course be greatly reduced; Therefore,

By act of 4th of February, 1801, (chap. 2162,) a new district was erected, and called the *seventh* district.

The place of holding the elections for the district of Plum and Versailles townships was altered by act of 3d of March, 1800, (chap. 2104,) and of 11th January, 1803, (chap. 2297.)

Deer township erected into a district, 12th of March, 1802, (chap. 2240.)

McKees-Port district established by act of 29th of March, 1802, (chap. 2263.)

Place of holding elections in Noblesburg district, changed by act of 22d of January, 1803, (chap. 2304.)

Pine township erected into a separate district, by act of 7th of February, 1803, (chap. 2312.)

The place of holding elections in Moon township fixed by act of 3d of April, 1804, (chap. 2507.)

And *Robinson* township erected into a separate district ib. § 10.

Pitt and *St. Clair* townships erected into separate districts, and the place of holding elections in Moon township fixed, by act of 4th of April, 1805, (chap. 2599, § 3, 4, 6.)

Mifflin township, *Indiana* township, and *Versailles* township, erected into separate districts, by act of 28th of March, 1808, (chap. 2972, § 10, 21, 30.)

Place of holding elections in Deer township, changed by act of 20th of March, 1810, § 26.

By the judiciary act of 24th of February, 1806, the counties of *Beaver, Allegheny, Washington, Fayette* and *Greene*, compose the fifth judiciary district.

The courts in *Beaver* are held on the first Monday in January, last Monday in March, and first Mondays in August and November; and the courts in *Allegheny* on the Mondays succeeding the courts in *Beaver*. The term continues one week.

Allegheny county is part of the western district of the supreme court, which holds its session at *Pittsburg* in this county.

CHAPTER MCCCXLIX.

1788.

A SUPPLEMENT to an act, entitled "An Act to divide Washington county into election districts."

SECT. I. WHEREAS the freemen of the fifth district of Washington county have, by their petition, set forth, that they labour under great inconvenience in attending upon their elections, the place of meeting (which is at Joshua Meek's) not being central: For remedy whereof,

SECT. II. *Be it enacted, and it is hereby enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same,* That, from and after the passing of this act, the boundary line of the fifth district shall begin at the mouth of Flaherty's run: thence, along the county line, to the plantation of Joseph Scott, Esquire, on Montour's run; thence to Armstrong's mill, on Miller's run; thence with the boundary line described in the act to which this is a supplement: And the freemen of the said fifth district, shall hold their elections at the house of Elizabeth McCanless.

The fifth election district of Washington county altered.

SECT. III. *And be it further enacted by the authority aforesaid,* That so much of the said act, entitled "An Act to divide Washington county into election districts," as far as the same respects the boundary line which divides the fifth and third districts, and ordains the place of election for the fifth district to be at the house of Joshua Meek, is hereby repealed, and declared null and void.

The former act so far repealed.

Passed 26th September, 1788.—Recorded in Law Book No. III, page 415.

CHAPTER MCCCL.

An ACT to erect the townships of Penns and Beaver, in the county of Northumberland, into a separate district, and alter the place of holding elections in the third district, in the said county of Northumberland.

SECT. I. WHEREAS the freemen of Penns and Beaver townships, in the county of Northumberland, have by their petition, set forth, that they labour under very great inconvenience, on account of the distance many of them live from the place of holding the annual elections, and by means of the troublesome streams of water which they have been obliged to pass over, in their way to the said election: For remedy whereof,

SECT. II. *Be it enacted and it is hereby enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same,* That the townships of Penns and Beaver, in the county of Northumberland aforesaid, shall, from and after the passing of this act, be struck off and separated from the first district in the said county, and established and erected into a separate district, called the sixth district in the county aforesaid; and that the freemen of the said sixth district, now erected as aforesaid, shall hold their elections at the house of Albright Swineford, in Penn's township aforesaid, any thing contained in a former law, obliging the inhabitants of the said townships to attend their elections at the county town notwithstanding.

The sixth election district of Northumberland county erected.

1788.

SECT. III. And whereas the inhabitants of the third district in the said county of Northumberland, have, by their petitions, set forth, that by the division of their districts, by a law passed the nineteenth day of September, one thousand seven hundred and eighty-six, without altering the usual place of election in the old district, the said place is rendered very inconvenient to the petitioners: For remedy whereof, *Be it enacted by the authority aforesaid,* That the freemen of the third district in the county of Northumberland, shall, from and after the passing of this act, hold their elections at the dwelling-house of Andrew Billmeyer, in Buffaloe township, any thing in a former law, directing the said elections to be held at Foutz's or Green's mill, to the contrary thereof, notwithstanding.

Passed 26th September, 1788.—Recorded in Law Book, No. III. page 418.

CHAPTER MCCCLI.

An ACT to alter certain election districts within the counties of Dauphin and Franklin, and to establish new ones therein.

SECT. I. WHEREAS the freemen of part of Derry and Lower Paxtang townships, in the county of Dauphin, and the freemen of the townships of Lurgan and Southampton, in the county of Franklin, have, by their petitions, set forth, that they labour under very great inconveniences in attending their elections, occasioned by the too great distance from the places appointed by law for holding their said elections: For remedy whereof,

SECT. II. *Be it enacted, and it is hereby enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same,* That from and after the passing of this act, that part of Derry township, now included in the second election district of the county of Dauphin, and that part of Lower Paxtang township, included within the third election district of the said county, be struck off into a sixth district, by the lines hereafter described, viz. Beginning at a stone mill, situate in Lower Paxtang township, near the bank of the Susquehanna river, distant about three miles from Middletown: thence, in a straight line, to Jacob Brant's; thence, in a straight line, to Christopher Earnest's, on Swatara creek; thence down the same to a ford, commonly called the Island Ford; thence across the said creek, and along the boundary line between the companies of Captain James Cluni and Captain Robert McKee, to a road that divides the townships of Londonderry and Derry; thence along the said road to Conewago creek; thence down the said creek to the Susquehanna river: thence up the Susquehanna river, including the islands, to the stone mill aforesaid. And the freemen of the said sixth district, now erected, shall hold their elections at the house now occupied by Conrad Nolfy, in the town of Middletown, in Lower Paxtang township aforesaid.

SECT. III. *And be it further enacted by the authority aforesaid,* That the freemen of the townships of Lurgan and Southampton, in the county of Franklin, shall be the fifth district in the said county, and the freemen of the aforesaid townships shall meet and hold their

The third election district of Northumberland altered.

The sixth election district of Dauphin county erected.

The fifth election district of Franklin county altered.

elections at the house now occupied by Joseph Finley, in the township of Southampton. 1788.

SECT. IV. *And be it further enacted by the authority aforesaid,* That so much of the act, entitled “An Act to regulate the general elections of this commonwealth, and to prevent frauds therein,” so far as the same respects the boundaries of the second and third election districts interfering with the district now laid off, be, and it is hereby repealed, and declared null and void.

Repeal of a former law, so far as it is here altered and supplied.

SECT. V. *And be it further enacted by the authority aforesaid,* That so much of an act, entitled “An Act to divide the county of Franklin into election districts, and to alter the place for holding the general elections in the sixth district in the county of Bedford, and for making the townships of Greenwood and Rye,* in the county of Cumberland, a sixth district, for the purpose of holding their general elections,” as is hereby altered, be, and the same is hereby repealed.

Repeal of part of another law, here altered and supplied.

[*Chap. 1290.]

Passed 27th September, 1788.—Recorded in Law Book No. III. page 419.

CHAPTER MCCCLIII.

A SUPPLEMENT to an act, entitled “An Act to alter and amend an Act, entitled “An Act for granting and disposing of the unappropriated lands within this state.”

SECT. I. WHEREAS, in and by an act of General Assembly of this commonwealth, entitled “An Act to alter and amend an act of Assembly, entitled “An Act for granting and disposing of the unappropriated lands within this state,”* it is enacted and declared, that the price of the unappropriated lands within this state, which had been purchased, or should be purchased, by certain commissioners, for that purpose appointed, should be fixed at thirty pounds for every one hundred acres of the same land, and so in proportion for greater or less quantities thereof; and it was by the same act directed, that payments of the same price should be made before the issuing of the warrant for surveying each tract thereof, respectively, either in gold or silver money, or in the bills of this state, which be dated on the twentieth day of April, *Anno Domini* one thousand seven hundred and eighty-one, or in certain certificates, which are particularly described in another act of General Assembly of this commonwealth, entitled “An Act for opening the Land-Office, and for granting and disposing of the unappropriated lands within this state,” that was published on the first day of April, *Anno Domini* one thousand seven hundred and eighty-four: And whereas the Land-Office of this state, for the sale and distribution of the unappropriated lands aforesaid, within the purchase aforementioned, was, in and by the act last recited, directed to be on the first day of May, which was in the year of our Lord one thousand seven hundred and eighty-five, and the same was accordingly opened on that day:

*Ante. chap. 1111, and see the notes to chap. 1083, ante, page 102.

And whereas on or about the said first day of May, and afterwards, considerable quantities of the same lands were applied for, and warrants of survey issued to divers persons, but for and during

1788. many months last past, very few applications have been made for the purchase of said lands, and it is reasonable to suppose that the best and most valuable of the lands within the purchase so as aforesaid made of the Indian nations (not specially appropriated nor reserved) have been surveyed and set apart by virtue of warrants issued upon the applications aforesaid, and it is judged proper that the price of the residue of the lands within the said purchase (not specially appropriated nor reserved) should be reduced and accommodated, so as to induce persons to become purchasers thereof.

SECT. 11. *Be it therefore enacted, and it is hereby enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same,*

The price of certain unappropriated lands lowered to £. 20 per 100 acres;

how payable.

That from and after the first day of March next, the price of the unappropriated lands of this state, within the seventeen districts in the counties of Northumberland and Luzerne, being a part of the purchase last made of the Indian nations, as aforesaid, shall be twenty pounds for every hundred acres of the same, and no more, and so in proportion for greater or less quantities thereof, and that the same price shall be payable before the issuing of each warrant or survey, respectively, for any quantity thereof, in gold and silver money, at the rates after which the same are commonly current in this state, or in the bills of credit of this commonwealth, which are dated on the sixteenth day of March, in the year of our Lord one thousand seven hundred and eighty-five, or in certificates of this state, which have been, or shall be, issued according to law, and the bearers whereof are entitled to receive of the Treasurer of this commonwealth an annual interest thereon, after the rate of six *per centum*, half yearly, and no other satisfaction for the said price.

Provido as to lands already surveyed.

Provided always, That this act shall not extend to any lands which have been, or which shall be surveyed by virtue of any warrant heretofore issued, for the surveying of lands within the late purchase made by this commonwealth as aforesaid.

Passed 3d October, 1788—Recorded in Law Book, No. III. page 424.

CHAPTER MCCCLVI.

An ACT to incorporate the Episcopal congregation of Saint James, at Perkiomen, in the township of New-Providence, and county of Montgomery.

Passed 3d October, 1788—Private Act—Recorded in Law Book No. III. page 410.

CHAPTER MCCCLVII.

[See chap. 1018 ante.]

An ACT for vesting a lot of ground, herein described, with the buildings and improvements thereon erected and made, in the trustees of Dickenson College, in the borough of Carlisle, in the County of Cumberland.

Passed 3d October, 1788.—Private Act.—Recorded in Law Book No. III. page 404.

CHAPTER MCCCLXV.

1788.

A SUPPLEMENT to an act of General Assembly, entitled "*An act for erecting the southern suburbs of the city of Philadelphia into the district of Southwark, for making the streets and roads already laid out therein public roads and highways, and for regulating such other streets and roads as the inhabitants thereof may hereafter lay out, and for other uses and purposes therein mentioned.*"

SECT. I. WHEREAS the district of Southwark is become populous, and in many places closely built, and requires some regulations: And in the act to which this is a supplement, no provision is made for the erecting of public pumps, to supply the inhabitants with water, and secure them against the ravages of fire, nor for regulating the descent of water-courses or common sewers; all which are essentially necessary in cities and close built towns: And whereas the pitching and paving the streets, lanes and alleys of the said district, will greatly tend to the improvement thereof, and the lighting and watching the same by night will be a great convenience and security against fires and robberies, as soon as the said district shall be enabled to support the expense thereof:

[Original act vol. 1, pa. 481, and see the notes thereto subjoined.]

SECT. II. *Be it therefore enacted, and it is hereby enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same,* That the supervisors of the streets, highways and landings, elected, or to be elected in pursuance of the act for that purpose made and provided, or a majority of them, by and with the consent of one or more of the Justices of the Peace for the said district, or for such district for election of Justices of the Peace, whereof the district of Southwark shall constitute a part, and a majority of the regulators of the said district, shall, from time to time, as occasion may require, dig such and so many wells, and therein fix pumps, in such convenient places within the streets, lanes and alleys of the said district, as to them shall appear necessary, so as to supply the inhabitants with water in the most equal manner; and the said pumps shall be kept in good order, at the charge of the said district, for ever.

Wells and pumps, how to be established in Southwark:

SECT. III. And whereas the pumps already fixed in the streets, lanes and alleys of the said district, are frequently so much neglected, as to be out of repair, and totally unfit for use: *Be it therefore enacted by the authority aforesaid,* That it shall and may be lawful for the said supervisors, or a majority of them, to confer with any person or persons, who shall have fixed any pump or pumps in any of the streets, lanes or alleys, in the said district, and if any of them who have so fixed any pump or pumps shall agree to keep them in good order and repair, to the satisfaction of a majority of the said supervisors, he, she or they shall be entitled to demand and receive yearly, for each pump so kept in repair, the sum of thirty shillings from the said supervisors, out of the public money in their hands. And if any person or persons whatsoever shall demand, exact or receive any sum or sums of money, or any other recompense, from any person or persons, for any water drawn out of any

and kept in repair.

Penalty on exacting a recompense for water

1788.

drawn from
such pumps.

Proceedings
in case pri-
vate pumps
are allowed
to be out of
repair.

Punishment
for wilfully
injuring the
pumps.

The streets,
&c. to be
regulated.

How owners
of grounds,
through
which sew-
ers pass,
shall be com-
pensated.

pump or pumps so erected, or to be erected, within the streets, lanes or alleys of the said district, or shall in any wise molest or hinder any person or persons from drawing water therefrom, he, she or they, being legally convicted thereof, on the testimony of one or more credible witnesses, before any Justice of Peace for the said district, or for such district for election of Justices of the Peace, whereof the district of Southwark shall constitute a part, shall forfeit and pay, for the first offence, the sum of five shillings, and for every subsequent offence ten shillings, the said money accruing by such fines and forfeitures to be applied for the purpose of carrying this act into execution. And if any pump or pumps erected, or to be erected by any private persons, within the streets, lanes and alleys of the said district, shall be out of repair for the space of two months successively, the same being proved by two reputable freeholders, to the satisfaction of any Justice of the Peace for the said district, or for such district for election of Justices of the Peace, whereof the district of Southwark shall constitute a part, the said Justice shall issue an order, under his hand and seal, directing the supervisors aforesaid to have such pump or pumps put into good order and repair, and so kept at the public charge, for ever.

SECT. IV. *And be it further enacted by the authority aforesaid,* That if any person or persons, from and after the passing of this act, shall wilfully or maliciously break or carry away the handle, pin or spear, of any of the pumps within the said district, or otherwise damage or injure any of the said pumps, and shall thereof be legally convicted before any Justice of the Peace for the city and county of Philadelphia, he, she or they shall forfeit and pay to the said supervisors, to be applied for the purpose of carrying this act into execution, the sum of five pounds for every such offence, on the first conviction, and for every other such offence committed, after the first conviction, the sum of ten pounds; and it shall be lawful for the said Justice to commit such offender to the common gaol of the said county, until the said fines and the costs of prosecution be paid.

SECT. V. *And be it further enacted by the authority aforesaid,* That the said supervisors, or a majority of them, for the time being, and the said regulators, or a majority of them, by and with the consent and approbation of one or more of the Justices of the Peace of the said district, shall have full power and authority, and they are hereby enjoined and required, as soon as conveniently may be, to regulate and direct the courses and degrees of descent, and the distances from the sides of the streets, lanes and alleys, of all and every the gutters, natural water-courses, and common sewers within the said district, and to fix and ascertain the same, so that the freeholders shall hereafter know with certainty how to erect their buildings and enclose their grounds in conformity thereto; and if it shall be necessary to carry any common sewer through the ground of any private person or body politic, the damages (if any) which shall or may accrue to the owner or owners of such ground, shall be ascertained by two indifferent persons, mutually to be chosen by the said supervisors, and the said owner or owners, which persons, not agreeing, shall have power to choose a third person, and the sum of money to be fixed by

them, or any two of them, shall be paid to the owner or owners by the said supervisors, in satisfaction of the said damages, out of the public monies in their hands; and thereupon it shall be lawful for the said supervisors, with all necessary workmen, tools, implements, carts, carriages and horses, to enter upon the said private grounds, whenever and as often as it shall be necessary, to make, amend, cleanse and scour such water-courses and common sewers, doing nevertheless as little damage as possible to the adjoining grounds, and always putting up and leaving all inclosures and improvements thereon in as good a state as they were at the time of their entry thereupon.

1788.

Of pitching
and paving
the streets.

SECT. VI. *And be it further enacted by the authority aforesaid,* That the said supervisors shall, as soon as conveniently may be after the gutters and water-courses in the streets, lanes and alleys within the said district are regulated, cause the same to be pitched or paved with brick or stone, as the case may require, and plant posts, to defend the same from being injured by carriages, and also have a foot way paved four feet wide with brick or flat stone, and keep an exact account of the costs and charges arising thereupon, and demand and receive, of and from each and every owner of the lots or grounds opposite to which such gutters or water-courses shall be so paved and posted, the full amount of so much of the expense thereof as shall be proportionate to the number of feet front of ground held by such owner or owners respectively. *Provided always nevertheless,* That all and every owner and owners shall have the privilege of paving and pitching their own fronts as aforesaid, so that they have it completed within three months after notice given for that purpose by the supervisors, or any two of them, in writing, under their hands. And in case any owner or owners shall neglect or refuse to pay such amount, for one month after such foot-way and water-course shall be paved and posted opposite to his her or their ground, it shall and may be lawful for the said supervisors to recover the same, in the same manner and form as debts under forty shillings are by law recoverable. And in case the grounds belong to minors or absent persons, then the same shall be recovered against any person or persons having the care of such grounds belonging to such minor or absent owner, and the receipts of the said supervisors for such money shall be good vouchers, to all executors, administrators, guardians, trustees, or attornies in fact, against their principals.

Owners may
pay and
pitch the
fronts of
their lots.

Proceedings
in case of
minors or
absentees.

SECT. VII. *And be it further enacted by the authority aforesaid,* That if any person or persons shall wilfully or maliciously obstruct or stop up any public water-course or common sewer, already made, or to be made and established, within the said district, and shall be thereof legally convicted in any Court of Record, having jurisdiction within the county of Philadelphia, he, she or they shall forfeit and pay, for such offence, any sum, to be fixed and assessed by such court, not less than ten, nor exceeding fifty pounds, and for a repetition of the offence after the first conviction, any sum not less than twenty, nor exceeding one hundred pounds, which sums shall go to the said supervisors for the purpose of carrying this act into execution.

Penalty on
obstructing
any water-
course or
common
sewer.

1788.

A tax to be assessed, for the purpose of this act.

SECT. VIII. And in order to defray the costs, charges and expenses, of carrying this act into execution, *Be it further enacted by the authority aforesaid*, That it shall and may be lawful for the said supervisors, and the assessors of the said district, together with one or more of the Justices of the Peace, to meet at some convenient place, and lay and assess a tax on the inhabitants and landed estate within the said district, in the same manner, and at the same time, with the road tax in the act to which this is a supplement.

Limitation of the tax.

Provided nevertheless, That the tax to be laid by virtue of this act shall not exceed two shillings and six pence on every hundred pounds, agreeably to the county rates, without any exceptions in favour of mechanics, manufacturers, or others.

Regulators and supervisors, how to be elected.

SECT. IX. And whereas inconveniences may arise from the elections for regulators and supervisors being held on the third Saturday in April, and from a total change of them at any future election, which may be prevented by an alteration in the time of election, and continuing some of them for a longer time than one year: *Be it therefore further enacted by the authority aforesaid*, That, from and after the passing of this act, the election for choosing regulators and supervisors shall be held on the first Saturday in January, annually, and agreeable to the directions and restrictions contained in the act to which this is a supplement; and that at the elections to be held as aforesaid the proper number of persons to fill both those offices shall be ballotted for, and he or they composing one equal third part of the number of officers for both those offices respectively, who shall have the greatest number of votes, shall be the officers for three years thence next following; and he or they composing another equal third part of the number of officers for both those offices respectively, who shall have the next greatest number of votes, shall be the officers for two years thence next following; and he or they composing another equal third part of the number of officers for both those offices respectively, who shall have the next or third greatest number of votes, shall be the officers for one year thence next following; and that at the election which shall happen as aforesaid, next after the said election now next coming, another number of persons, sufficient to supply the places of those whose times shall expire by the directions aforesaid, shall be chosen, and continue in office for the term of three years, and so *toties quoties* in every year, to supply the vacancies which shall arise: *Provided always*, That no person shall be excluded from the choice of the people, on account of his having filled either of the said offices the preceding term of three years: *And provided also*, That if, at the now next election, two or more persons shall have an equal number of votes for the same office, the term for which each of them shall serve shall be determined by lots, to be drawn by the inspectors and judges of the election, immediately after casting up the votes.

Qualification of the supervisors.

SECT. X. *And be it further enacted by the authority aforesaid*, That before the said supervisors shall take upon themselves the duties by this act enjoined and required, they and each of them, shall take an oath or affirmation, before one of the Justices of the said dis-

trict, or of such district for election of Justices of the peace, whereof the district of Southwark shall constitute a part, of the following tenor, to wit: That they will well and truly, according to the best of their skill, knowledge and ability, discharge and fulfil the duties and services enjoined them by this act: that they will use their endeavours to collect the monies arising, as well by the taxes to be imposed by virtue of this act, as by the fines therein mentioned, and will apply the same to the uses and purposes therein directed, and to no other uses or purposes whatsoever.

1788.

SECT. XI. *And be it further enacted by the authority aforesaid,* That the said supervisors and regulators shall be allowed, out of the monies arising by virtue of this act, the sum of six shillings each, for each and every day they shall be employed in attending to the services enjoined by this act, in full satisfaction for all their time, trouble and expenses.

Pay of the supervisors and regulators.

SECT. XII. *And be it further enacted by the authority aforesaid,* That so soon as the services by this act enjoined are so performed, as that the tax hereby authorized to be levied and collected shall be no longer necessary for those purposes, it shall and may be lawful for the said supervisors to continue the said tax, and to apply the monies arising thereby to the pitching and paving the streets, lanes and alleys, and the lighting and watching the said district, or such parts thereof, as shall most immediately require to be lighted and watched by night.

The tax (when the first appropriation is completed, to be applied to lighting and watching.

SECT. XIII. *And be it further enacted by the authority aforesaid,* That the Justices for the district of Southwark, or of such district for election of Justices of the peace, whereof the district of Southwark shall be a part, or any one of them, taking to their or his assistance two reputable freeholders of the said district, shall, on or before the first Saturday in March, in every year, from and after the passing of this act, settle the accounts of the supervisors, and allow them every reasonable charge; a fair statement of which accounts shall be published in hand-bills, in three or more of the most public places in the district aforesaid (and published in one or more of the newspapers which are most in circulation in the said district;) and if any of the said supervisors shall refuse or neglect to settle their accounts as aforesaid, they, and each of them, so refusing or neglecting, shall forfeit and pay the sum of twenty pounds, over and above the balance which may be found in his or their hands, to be recovered as debts under ten pounds are by law recoverable, to be applied for the purpose of carrying this act into execution.

Accounts of the supervisors how to be settled.

SECT. XIV. *And be it further enacted by the authority aforesaid,* That every clause, matter and thing, contained in the said act, to which this is a supplement, which is contradictory or repugnant to or in any wise altered by this act, be, and the same is hereby repealed, annulled and made void, and of no force and effect whatsoever.

Repeal of part of the former act.

1788.

CHAPTER MCCCLXVI.

A SUPPLEMENT to an act, entitled "An Act for regulating the fishery in the river Conestogoe, in the county of Lancaster."

[Original
act, vol. I,
page 416,
chap. 692.]

SECT. I. WHEREAS, since the passing of an act for regulating the fishery in the river Conestogoe, in the county of Lancaster, passed the twenty-second day of January, one thousand seven hundred and seventy-four, it has been found that many means and contrivances, not guarded against in the said law, have been used, whereby the fish have been obstructed from going up the said river, and also whereby the spawn, fry or brood of fish have been destroyed or spoiled: Wherefore, for remedying such mischiefs, and for the more easy and effectual recovery of the fines and forfeitures in this act mentioned,

Penalty on
obstru-
ting
the fish, &c.
from going
up the Con-
estogoe.

SECT. II. *Be it enacted, and it is hereby enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same,* That if any person or persons whatsoever, from and after the passing this act, shall use or practise any of the means specified in the said act, to which this is a supplement, to obstruct the said fish from going up the said river, or destroy or spoil any spawn, fry or brood of fish, of any kind whatsoever, or shall, by using any sweep-net, draw-net, draught-net, cast-net, stalker, sturchel, or shove-net, or nets of any other name or description, or who shall use any seine or seines (except for the taking of shad-fish in due season) in the said river, below the mouth of Muddy-creek,* for the taking of fish, every person so offending, being thereof legally convicted, by the oath or affirmation of one or more witnesses, or by his or her own confession, before any Justices of the county of Lancaster, shall forfeit and pay the sum of five pounds, lawful money of this commonwealth, for every such offence, or suffer two months imprisonment, without bail or mainprize; one moiety of which forfeiture shall be paid to the informer or prosecutor, and the other moiety to the overseers of the poor of the township or borough where such offender shall reside.

*[See the
act of 1st of
April, 1835,
chap. 2586,
which re-
peals part of
this section.]

When the
shad fishery
may be car-
ried on.

Provided always nevertheless, That nothing in this act contained shall be construed or understood to deprive or hinder any person or persons from drawing a seine or net, for the taking of shad-fish, from the fifteenth day of April, to the twenty-fifth day of May, in every year, in any part of the said river of Conestogoe. *And provided also,* That if either the prosecutor, or person charged with an offence against this act, or the act to which this is a supplement, shall be aggrieved by the judgment of the said justice, then and in such case, either party may appeal to the next General Quarter Sessions of the peace, who are to hear and determine the said appeal.

Appeal al-
lowed

Repeal of
part of a
former law.

SECT. III. *And be it further enacted by the authority aforesaid,* That so much of the aforesaid act, as relates to the forfeiture and imprisonment mentioned in the second section of the aforesaid act, to which this is a supplement, be, and is hereby repealed, and made null and void, any thing to the contrary thereof in the said section contained notwithstanding.

SECT. IV. *And be it further enacted by the authority aforesaid, 1788.*
 That the person or persons who shall hereafter prosecute, in the name of the commonwealth, any person offending against this act, or the act to which this is a supplement, shall and may be a legal witness to prove such offence either before the justice, or on an appeal, notwithstanding he, she or they are to receive one half of the forfeiture, as aforesaid.

The prosecutor *quis tam* may be a witness.

Passed 4th October, 1788.—Recorded in Law Book, No. III. page 435.

CHAPTER MCCCLXIX.

An ACT to incorporate the members of the religious society of German Roman Catholics of the church called the Holy Trinity, in the city of Philadelphia.

Passed 4th October, 1783.—Private Act.—Recorded in Law Book No. III. page 437.

A C T S

OF THE

General Assembly of Pennsylvania.

Passed in the Thirteenth General Assembly of the commonwealth, in which were held three Sessions,—the first commencing 27th day of October, and ending the 22d day of November, 1788,—the second commencing the 3d day of February, and ending the 28th day of March, 1789,—and the third, commencing the 18th day of August, and ending the 30th day of September, 1789.

1788.

RICHARD PETERS, SPEAKER.

CHAPTER MCCCLXXV.

An ACT to incorporate the Presbyterian congregation of Tredyffrin township, in the county of Chester.

Passed 22d November, 1788.—Private Act.—Recorded in Law Book No. III. page 446.

CHAPTER MCCCLXXIX.

An ACT for granting to the corporation of the Ministers, Vestrymen and Churchwardens of the German Lutheran congregation in and near the city of Philadelphia, in the state of Pennsylvania, certain lands therein mentioned, for endowing a free-school, for the use of the poor of the said congregation.

Passed 14th February, 1789.—Private Act.—Recorded in Law Book No. III. page 447.

CHAPTER MCCCLXXXIII.

An ACT to incorporate the city of Philadelphia. (o)

SECT. I. WHEREAS, the intention of civil government is to provide for the order, safety and happiness of the people; and

(o) For several supplements to the incorporating law, see acts passed, respectively, on the 9th of December, 1789, the 2d of April, 1790, and the 8th

where the general systems and regulations thereof are found to be ineffectual, it is the duty of the Legislature to remedy the defects: And whereas the administration of government within the city of Philadelphia is, in its present form, inadequate to the suppression of vice and immorality to the advancement of the public health and order, and to the promotion of trade, industry and happiness; and, in order to provide against the evils occasioned thereby, it is necessary to invest the inhabitants thereof with more speedy, vigorous, and effective powers of government, than are at present established: 1789.

SECT. II. *Be it therefore enacted, and it is hereby enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same,* That the inhabitants of the city of Philadelphia, as the same extends and is laid out between the rivers Delaware and Schuylkill, be, and they, and their successors for ever, are hereby constituted a corporation and body politic, in fact and in law, by the name and style of "The Mayor, Aldermen and Citizens of Philadelphia," and by the same name shall have perpetual succession; and they and their successors shall, at all times for ever, be able and capable in law to have, purchase, take, receive, possess and enjoy lands, tenements and hereditaments, liberties, franchises and jurisdictions, goods, chattels and effects to them and their successors for ever, or for any other or less estate; and the same lands, tenements and hereditaments, goods, chattels and effects, to grant, bargain, sell, alien and convey, mortgage, pledge, charge and encumber, or demise and dispose of, at their will and pleasure.

The city of Philadelphia incorporated; the name; powers and privileges.

of March, 1792; and for acts respecting the late Wardens of the city (whose interests, powers and jurisdiction, are transferred to the Corporation) see ante. chap. 1090. See the act for registering German passengers, ante. page 328. By an act of the 13th of March, 1789, foreigners may take the test of allegiance before the Mayor, Recorder, or any Alderman; by an act of the 30th of September, 1791, the Mayor and Recorder are empowered to receive the proof or acknowledgment of deeds; and by a resolution of the 19th of September, 1791, the old powder magazine is directed to be delivered to the Common Council. See the title *Philadelphia City*, "Markets" in the general index. (*Note to former edition.*) [By an act passed 18th of February, 1805, any judge of the supreme court, or president of the common pleas, empowered to administer the oath to the Mayor. § 2. In the absence, or sickness of the Mayor, the Recorder may administer the oaths to the Select and Common Councils. § 3. No Alderman, or person holding an office of trust or profit under the laws of the Commonwealth, or ordinances of the Councils, shall be competent to serve as a member of either of the Councils where the emo-

luments of the office are paid out of the city treasury.

Aldermen empowered to take acknowledgments of deeds in the city and county by act of 20th of January, 1806, (chap. 2619.)

The powers vested in the Wardens of the city by the act 10th of April, 1781, (vol. 1, pa. 533,) transferred to the Mayor, or Recorder, or any two Aldermen, &c. by an act passed 7th of April, 1807, (chap. 2815.)

An act passed 4th of April, 1796, (chap. 1894,) the time and manner of electing the Select and Common Councils are prescribed. The legislative power of the city exclusively vested in the Select and Common Councils.

The Governor to appoint one Recorder and fifteen Aldermen for the city, to hold their offices during good behaviour, &c.

The time and manner of electing the Mayor, and his duties, prescribed, and emoluments fixed.

Citizens to be admitted to hear the debates in the Councils.

And see the act of 20th of March, 1810, (the consolidating, justices' act, § 30.) by which the Alderman's court is abolished.

1789.

Capacity to
sue, and be
sued.

SECT. III. *And be it further enacted by the authority aforesaid,* That the said Corporation, by the name and style aforesaid, are, and for ever shall be, able and capable in law to sue and be sued, plead and be impleaded, answer and be answered unto, defend and be defended, in all courts of record, and elsewhere, in all manner of actions, suits, complaints, pleas, causes and matters whatsoever; and to do and execute all and singular other matters and things, that to them, as a body politic and corporate, in law and in fact, shall and may appertain; and for that purpose shall have and use one common seal, and the same, from time to time, shall and may, at their will and pleasure, change and alter, deface and make anew.

To use a
common
seal.

SECT. IV [Of the election of the Aldermen:—repealed and supplied by act of 4th April, 1796, chap. 1894.]

SECT. V. [Of the election of the Common Council-men:—repealed and supplied by act of 4th of April, 1796, chap. 1894.]

The elec-
tions to be
conducted
by the offi-
cers of the
general elec-
tions;

SECT. VI. *And be it further enacted by the authority aforesaid,* That the first, and all future and other election and elections, [whether of Aldermen or] of Common Council-men, to be had and held in pursuance of this act, shall be held and conducted by the same officers, who shall have been duly chosen or appointed and authorized to hold, manage and conduct the election of Representatives for the said city, to serve in the said General Assembly, [at the general election next preceding every election to be held in pursuance of this act; and that the said officers, and the clerks who shall be employed at the said elections, and each and every of them, shall severally take a solemn oath or affirmation, before entering upon the duties in and by this act enjoined them, well and faithfully to discharge the same, according to the best of their skill and abilities.]

[At the gene-
ral election
by act of 4th
of April,
1796.]and in the
same mode,
under the
same rules
and penal-
ties.

SECT. VII. *And be it further enacted by the authority aforesaid,* That all elections to be had and held in pursuance of this act shall be held and conducted (except as to the qualifications of the voters for, or electors of, Aldermen, and the number of persons to be voted for, elected and chosen, to serve as Aldermen and Common Council-men, and except that the votes or tickets to be given in may be either written or printed, and except also as in and by this act is otherwise directed) in the same and like manner, as in and by the laws of this commonwealth is or shall be directed for the holding of the general elections for Representatives to serve in the said General Assembly, and under and subject to the same rules, regulations, pains and penalties; and all and every person and persons, who shall be concerned in holding or conducting of the said elections, or any of them, or who shall come to vote thereat, or be any wise concerned therein, are hereby enjoined and required to conduct and demean him and themselves accordingly.

Returns of
the elec-
tions, how
to be made.

SECT. VIII. *And be it further enacted by the authority aforesaid,* That when each election to be had and held in pursuance of this act shall be closed, and the number of votes for each candidate or person voted for shall be counted and ascertained, the Judges of the said election, or a majority of them, shall prepare and make, under their respective hands and seals, a return thereof, containing the names [of each Alderman elect, or] of each Common Council-

[Altered by
the act of 4th
of April,
1799.]

man elect, as the case may be, with the number of votes in favour of each of them; and shall, within twenty-four hours after the closing of each of the said elections, give notice, in writing, to each of the [said Alderman elect, or] Common Council-men elect, of their respective elections to the office of [Alderman or] Common Councilman, as the case may be, and shall also deliver, or cause to be delivered, the said return to the said [Aldermen elect, or] Common Council-men elect, as the case may be, at the times and places in and by this act appointed for them respectively to meet and receive the same.

1789.

SECT. IX. [The Aldermen elect to receive and judge of their returns. Repealed and supplied by the act of fourth of April, one thousand seven hundred and ninety-six, chap. 1894.]

SECT. X. *And be it further enacted by the authority aforesaid,* That each and every Alderman, [who shall be elected, chosen and returned, in manner aforesaid, and whose election shall be so as aforesaid approved of, shall, before he enters on the execution of his office, take a solemn oath or affirmation, [before his excellency the President, or the Vice-President in Council.] “well and faithfully to execute the office of Alderman of the said city;” [and shall thereupon, without any further or other commission, be an Alderman of the said city, until the next general election of Aldermen, to be held in pursuance of the directions of this act, and shall, during the time aforesaid, be vested with all the powers and jurisdictions of a Justice of the Peace in and for the said city, and with such other powers and jurisdictions, as in and by this act are given to any Alderman.]

Qualification of the Aldermen.
[Altered as above.]

SECT. XI. *And be it further enacted by the authority aforesaid,* That the said Common Council-men elect, or thirty-persons having the highest number of votes for the office of Common Council-men, shall meet together at the State-house, in the said city, between the hours of ten and twelve of the clock in the forenoon, on the Friday next following each and every election of Common Council-men, to be held in pursuance of this act, and shall then and there receive the said returns of Common Council-men elect, and shall forthwith proceed to examine the same, and to judge and determine thereon; and for that purpose, and to the end and intent that this act, or the provisions herein contained, may not be ineffectual, the said Common Council-men who shall be elected and returned as aforesaid, or a majority of them, shall be Judges of their own elections, and shall have full power and authority to approve thereof, or to set aside the same, and to order new elections, as the law may require, to be held in the manner herein before directed, and at such times as shall be by them appointed, of which they shall give at least six days previous notice, in three or more of the public newspapers printed in the said city.

The Common Council-men elect to receive and judge of their returns.

SECT. XII. *And be it further enacted by the authority aforesaid,* That each and every Common Council-man, who shall be elected, chosen and returned, in manner aforesaid, and whose election shall be so as aforesaid approved of, shall, before he enters on the execution of his office, take a solemn oath or affirmation, before the

Qualification of the Common Council-men.

1789. Mayor* of the said city for the time being, "well and faithfully to execute the office of a Common Council-man of the said city," and shall thereupon, without any further or other commission, enter upon the duties thereof, and shall hold and exercise the same until the next general election of Common Council-men, to be held in pursuance of this act.

[* Or recorder. See first note.]

Of the choice of a Mayor; and his qualification. [Altered by the act of 18th of Feb. 1803. See first note.]

SECT. XIII. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful for the Aldermen of the said city, or a majority of them, to elect and choose, by ballot, every year, or oftener, if a vacancy shall happen, by death, resignation, removal from office, or from the city, one of their own number, who shall be Mayor of the said city for the ensuing year, if the time for which he shall have been elected and chosen as Alderman shall so long continue; and the said Mayor elect [shall be presented to his excellency the President or the Vice-President, in Council, and] shall [then and there] take a solemn oath or affirmation, "well and faithfully to execute the office of Mayor of the said city," and shall thereupon enter upon and perform the duties of the said office, without any further or other commission.

SECT. XIV. [Of the choice of a Recorder—To be appointed by the Governor by the act of fourth of April, one thousand seven hundred and ninety-six, chap. 1894.]

The Mayor, Recorder and Aldermen liable to impeachment.

Provided nevertheless, That each and every Mayor, Recorder or Alderman, who shall be elected, chosen or appointed, in pursuance of this act, and who shall misdeemean himself in office, shall be liable to be impeached by the General Assembly, before the President or Vice-President and Council, and shall be removeable for misconduct in office by the said General Assembly.

Of the removal of a Common Council-man for misbehaviour, on petition.

SECT. XV. And in order that the said Common Council-men may at all times consist of those who are not only able and capable to perform the duties thereof, but of such as shall be mindful of and attentive to the said duties; and in order also to avoid an entire dependence, which might not be politically just and expedient, of any such Common Council-man, either on the body of which he may be a member, or on that of the Aldermen, *Be it further enacted by the authority aforesaid,* That if any Common Council-man shall misbehave himself in his said office, or shall fail or neglect well and faithfully to discharge the duties thereof, it shall and may be lawful for the Mayor or Recorder, Aldermen and Common Council-men, or a majority of the Aldermen and also of the Common Council-men, if the said Mayor or Recorder, and two thirds of the Aldermen, and also two thirds of the Common Council-men, who shall be present, shall agree thereto, on the petition and complaint, in writing, of twenty-four freeholders of the said city, and of twenty-four freemen of the said city, who shall not be freeholders, but who shall nevertheless be qualified, in manner aforesaid, to vote for Common Council-men, to remove, in a summary way, any such Common Council-man from his said office: *Provided nevertheless,* That the said petition and complaint, in writing, shall fully and minutely state all the causes assigned for such removal, and no other cause whatever shall be assigned, heard, or enquired into: *And provided also,* That a copy of the said petition and complaint, with

Form of the petition.

1789.

a notice of the time and place appointed for hearing and enquiring into the same, shall be served on such Common Council-man, at least ten days before any such hearing or enquiring shall take place.

SECT. XVI. *And be it further enacted by the authority aforesaid,* That the Mayor, Recorder, Aldermen and Common Council-men, in Common Council assembled, shall have full power and authority to make, ordain, constitute and establish, such and so many laws, ordinances, regulations and constitutions, (provided the same shall not be repugnant to the laws and constitution of this commonwealth,) as shall be necessary or convenient for the government and welfare of the said city, and the same to enforce, put in use, and execution, by the proper officers, and at their pleasure to revoke, alter and make anew, as occasion may require. Power of the corporation to make by-laws.

SECT. XVII. And in order that a knowledge of the said laws, ordinances, regulations and constitutions, may at all times be had and obtained, *It is hereby further enacted by the authority aforesaid,* That such and so many of them as shall not be published in two or more of the public newspapers published in the said city, within ten days from and after their being severally passed, ordained and established, and also recorded in the office of the [Master of the Rolls,] who shall be allowed and paid for recording thereof, at the same rate as is allowed for recording the laws of this commonwealth, within thirty days from and after their being so as aforesaid passed, ordained and established, shall be null and void. Of the publication of the ordinances; [Quære.]

SECT. XVIII. And in order that the publications thereof may, at all times, be known and ascertained, *It is further enacted and declared by the authority aforesaid,* That before any of the said laws, ordinances, regulations or constitutions, shall be so as aforesaid recorded, the publications thereof, respectively, with the times thereof, shall be proved by the oath or solemn affirmation of some credible person, which said oath or affirmation shall be recorded therewith, and at all times be deemed and taken as sufficient evidence of the time of such publication. and the proof of such publication.

SECT. XIX. *And be it further enacted by the authority aforesaid,* That the Mayor, Recorder and Aldermen of the said city, for the time being, shall severally and respectively have all the jurisdictions, powers and authorities of Justices of the Peace, and Justices of Oyer and Terminer and Gaol Delivery, of and for the said city, and shall act therein accordingly, jointly or severally, as fully and amply as any Justice or Justices of the Peace, or of Oyer and Terminer, or Gaol Delivery, of or for any county within this commonwealth, may or can do, in or for such county. The Mayor, Recorder and Aldermen to have the power of Justices, &c.

SECT. XX. *And be it further enacted by the authority aforesaid,* That the said Mayor, Recorder and Aldermen, or any four or more of them, (whereof the Mayor or Recorder for the time being shall be one,) shall have full power and authority, and they are hereby vested with full power and authority, to enquire of, hear, try, and determine, agreeably to the laws and constitutions of this commonwealth, all larcenies, forgeries, perjuries, assaults and batteries, riots, routs, and unlawful assemblies, and all other offences which have been committed or shall be committed, within the said city, Institution and power of the Mayor's Court.

1789. which would be cognizable in any county court of General Quarter Sessions of the Peace, of or for any county within this commonwealth, had the same offences, or any of them, been committed within any such county, and to punish all persons who shall be convicted of the same offences, or any of them, agreeably to the laws of this commonwealth, and also to enquire of, hear, try and determine all offences which shall be committed within the said city, against any of the laws, ordinances, regulations or constitutions, that shall be made, ordained or established, in pursuance of this act, and to punish the offender and offenders, as by the said laws, ordinances, regulations or constitutions, shall be prescribed or directed; and also to impose fines on jurymen and others, according to law, and to levy the same; and to award process, take recognizances for keeping of the peace, for being of good behaviour, and for appearance, or otherwise; or commit to prison, as occasion shall lawfully require, without being accountable to the commonwealth for any fines or amercements to be imposed for the said offences, or any of them, except such as are or shall be by law made payable into the state treasury, for offences against this commonwealth; and generally to do all such matters and things within the said city, as any court of General Quarter Sessions of the Peace, Oyer and Terminer and Gaol Delivery, of and for any county within this commonwealth, may or can do within any such county: And to the ends and intents, and for the purposes aforesaid, and for such other ends, intents and purposes, as are in and by this act declared or mentioned, the said Mayor, Recorder and Aldermen, or any four of them (whereof the Mayor or Recorder, for the time being, shall be one) shall have full power and authority, and they are hereby vested with full power and authority, to hold and keep a Court of Record, within the said city, four times in each year, by the name, style and title of "The Mayor's Court for the city of Philadelphia," for the enquiring, hearing, trying and determining of the pleas and matters aforesaid, and for the punishing of those who shall be found guilty thereof, and for the causing of all encroachments in the streets of the said city, and all nuisances, to be removed, and for the punishing the offenders as the law and usage shall in such case require, and for the doing and performing of all such other matters and things as are, in and by this act, made cognizable in the said court.

[See a supplement to the judiciary act passed 15th of March, 1800, § 9. Indictments may be removed from this court to the quarter sessions.]

Writ of error from the Mayor's Court to the Supreme Court.

SECT. XXI. *And be it further enacted by the authority aforesaid,* That if any person or persons shall find him, her or themselves, aggrieved by any judgment of the said court of record, it shall and may be lawful for the party or parties so aggrieved, to sue out and obtain his, her or their writ or writs of error, which shall be granted of course, in like manner as other writs of error are granted, and made returnable in the Supreme Court of this commonwealth, and shall be proceeded in under the same rules and regulations.

How the writ of error shall be returned.

Provided always, That when any writ of error shall be granted upon any judgment to be given in the said court of record, the said Mayor, Recorder and Aldermen, or their successors, shall not be compelled thereby, or by any other writ or writs to them directed, to remove, send or certify, into the said Supreme Court, or elsewhere,

any of the indictments, or presentments, but only the tenors or transcripts thereof, and of the records touching and concerning the same, and of the proceedings thereon, under their common seal; and after such judgments shall be reversed or affirmed, it shall and may be lawful for the said Mayor, Recorder and Aldermen, and their successors to proceed to execution, or otherwise, as shall according to law appertain.

1789.

SECT. XXII. And to the end and intent that such persons, indicted or outlawed for felonies or other offences supposed by such indictments or outlawries to have been committed within the said city, as shall dwell, remove, lurk, or be received without the bounds and limits of the said city, may be brought to justice, *Be it further enacted by the authority aforesaid*, That the Mayor or Recorder of the said city, for the time being, shall and may, as often as occasion may require, issue his writ or writs of *Capias*, to the Sheriff or Sheriffs, or other officer of any county or counties, or town corporate, within this commonwealth, directed, commanding him or them to take and bring the body or bodies of any such person or persons, as shall be so as aforesaid indicted or outlawed, before him, the said Mayor or Recorder, or either of them, to be dealt with according to law; and every Sheriff and other officer, to whom any such writ or writs of *Capias* shall be directed and delivered, is hereby enjoined and required to use due diligence to execute the same, under such pains and penalties as are by law incurred by any Sheriff or other officer, for refusing or neglecting to obey and execute any *Capias*, or other process, to him directed and delivered.

The Mayor, or Recorder may issue writs of *Capias* into any county.

SECT. XXIII. And to the further end and intent that there may not be a failure of justice within the said city, by reason of any person or persons, who may be charged with having committed any offence or offences therein, lurking, or being in secret or other places in the neighbourhood thereof, *Be it further enacted by the authority aforesaid*, That it shall and may be lawful for any constable or constables of the said city, to whom any warrant, under the hand and seal of the said Mayor, Recorder or Aldermen, or any of them, shall be delivered, commanding him or them to take any person or persons, who shall have been charged with having committed any offence within the said city, and to bring him or them before the said Mayor, Recorder and Aldermen, or any of them, and he and they are hereby enjoined and required to execute the same, by making of the arrest, if the same can be done at any place within the county of Philadelphia, and also by bringing such offender or offenders before the said Mayor, Recorder and Aldermen, or some of them.

On warrant of the Mayor, Recorder or Aldermen, constables may arrest within the county of Philadelphia.

SECT. XXIV. And to the further end and intent that there may not be a failure of justice within the said city, by reason of any witness or witnesses residing or being without the bounds or limits thereof, *Be it further enacted by the authority aforesaid*, That it shall and may be lawful for the said Mayor, Recorder and Aldermen, or any of them, before whom any complaint, indictment, plea, matter or thing, of a criminal or civil nature, within his or their jurisdiction, shall be made or depending, to issue his or their *Subpoena* to any person or persons within this commonwealth, commanding him or them to appear and give evidence therein; and every person

Of issuing writs of *Subpoena*.

1789. to whom the same shall be directed, and on whom service thereof shall be duly made, shall attend accordingly, and give evidence, under such pains and penalties as are by law incurred by any person or persons refusing to attend and give evidence, when duly subpoenaed for that purpose.

SECT. XXV. [Establishment and power of the Alderman's Court. Repealed by act of twentieth of March, one thousand eight hundred and ten.]

SECT. XXVI. [Fees allowed] in the Alderman's Court. Repealed by act of twentieth of March, one thousand eight hundred and ten.]

Summary jurisdiction of the Mayor and Aldermen for debts under forty shillings.

SECT. XXVII. *And be it further enacted by the authority aforesaid,* That the Mayor of the said city, for the time being, and each and every Alderman thereof, shall have cognizance of, and a sole and exclusive right to hear and determine, in a summary way, all such matters and things, within the said city, where the debt or demand shall not amount to forty shillings, as are by law cognizable before any one Justice of the peace in any county within this commonwealth, and shall issue the like process, in nature of a summons, *Capias*, or attachment, as the case may require; and shall proceed therein in like manner, for the like fees or costs, and with the like powers and authorities, and under and subject to the like rules, regulations and restrictions, and to the like relief for insolvent debtors, and to the like means, process and execution, as in cases of debt or other demand under forty shillings, before any Justice of the peace within this commonwealth.

Appeal from the Mayor or Aldermen to the Alderman's Court.

SECT. XXVIII. *Provided nevertheless,* That if any person or persons shall find him, her or themselves aggrieved by any judgment or judgments of any such Mayor or Aldermen, in any such debt or demand under forty shillings, it shall and may be lawful for him, her or them, who shall be so aggrieved, to appeal, at any time within six days, from any such judgment or judgments, [to the Alderman's Court in and by this act established, where the said appeal shall, with all convenient speed, be heard and finally determined, and execution be awarded in the manner herein before directed, and for the like costs:] *And provided further,* That before any such appeal shall be allowed or admitted [by the said Alderman's Court,] sufficient security shall be entered in the same court, by the person or persons so appealing (if he, she or they shall not be a freeholder or freeholders,) to prosecute the said appeal to effect and to abide by and perform the order and judgment of the said court, in case judgment shall pass against him, her or them, on the said appeal: *And provided further,* That before the said appeal shall be determined or heard, notice in writing, of every such appeal shall be given to the adverse party.

[So far as respects the appeal to the Alderman's Court, this section is repealed by the act of 20th of March, 1810.]

SECT. XXIX. And in order to prevent the frequent clashing of jurisdictions, and the mischiefs arising therefrom, *Be it further enacted by the authority aforesaid,* That the Justices of the court of General Quarter Sessions of the peace of and for the county of Philadelphia, or any or either of them, shall not, in any matter or thing of a civil or criminal nature, have any further or other powers or jurisdictions within the said city, than the said Mayor, Recorder and Aldermen, or any of them, may or can have in the said county of Philadelphia, and without the bounds and limits of the said city.

The county Justices to have no more jurisdiction in the city, than the Mayor, &c. have in the county

SECT. XXX. *And be it further enacted by the authority aforesaid,* 1789.
 That, from and immediately after the fifteenth day of April next, so much of each and every act and acts of General Assembly of this commonwealth, heretofore made or enacted, as directs, authorizes or regulates the electing, choosing, nominating, commissioning or appointing of any Justice or Justices of the peace, in, of or for the said city of Philadelphia, or any ward or wards, district or districts, therein; and also so much of each and every act and acts of General Assembly, as directs, authorizes or empowers any Justice or Justices of the peace, jointly or severally, either by themselves, or collectively with any other person or persons, to take cognizance of, or to direct, do or perform any matter or thing whatsoever, within the said city, either of a criminal or civil nature, or otherwise; and also so much of each and every act and acts of General Assembly, as directs, authorizes or empowers the nominating, choosing, appointing or commissioning of any person or persons to hold a City Court or Courts in or for the said city, or as directs, authorizes or empowers any such person or persons to hold any such court or courts, or to take cognizance of, hear, try or determine any matter or thing therein, be, and they and each and every of them are hereby, severally and respectively, repealed and made null and void. *Provided* Repeal of laws for appointing Justices in the city, and for holding City Courts.
nevertheless, That neither this act, or any thing herein contained, shall annul, make void, or prevent the execution of any judgment, order, sentence, decree, award of execution, or other matter or thing, already passed, pronounced, awarded, ordered, issued or done, or which shall, on or before the said fifteenth day of April next, be passed, pronounced, awarded, ordered, issued or done, by the said Judges or Justices, or any of them, but the same shall be of the same force and effect, and be obeyed and executed, as fully as if this act had not been passed. Proviso, as to process depending.

SECT. XXXI. [This section temporary and obsolete.]

SECT. XXXII. *And be it further enacted by the authority aforesaid,* That all recognizances for appearance, which shall be taken by or before the said Justices or Judges, or any of them, from and after the passing of this act, shall be for the appearance of the party or parties at the next Mayor's Court to be held for the city of Philadelphia, and shall be by them respectively certified and returned to the said court. Future recognizances to be returnable to the City Court.

SECT. XXXIII. *And be it further enacted by the authority aforesaid,* That the Judges of the said City Court shall and they are hereby enjoined and required to deliver, or cause to be delivered to the said Mayor, Recorder and Aldermen, at the next Mayor's Court to be had and held in pursuance of this act, all recognizances for appearance, which have been taken before, or certified and returned to them, and which have not been discharged by appearance or otherwise; and also all indictments and presentments which have been found or made, or shall be found or made before them, and which shall not be ended and determined; and also all papers and records, duly certified, of all such matters and things as have been or shall be begun in the said City Court, and as shall remain unfinished: And the said Mayor, Recorder and Aldermen, or any four of them (whereof the Mayor or Recorder, for the time being, The records of the City Court to be surrendered to the Mayor's Court.
 who shall proceed therein.

1789. shall be one) shall proceed therein, as to law and justice shall appertain, as fully and amply, to all intents and purposes, as they might or could have done, if such indictments or presentments had been found before or made to them, or such recognizances had been taken by them, or any of them.

Transfer of the duties, powers, contracts, and property of the City Wardens and Street Commissioners to the Corporation.

SECT. XXXIV. *And be it further enacted by the authority aforesaid,* That so much of all and every act and acts of General Assembly, as directs, authorizes or requires any matters or things to be done and performed by the City Wardens, or by the Commissioners for paving and cleansing the streets of the said city, or by all or any of them, shall, from and after the first day of June next, be null and void, and the said officers shall no longer continue in office, nor shall any new appointment of such officers be made under any former law or act of Assembly, *Provided nevertheless,* That nothing herein contained shall bar, prevent, or at all impede the recovery of any sum or sums of money, or of any other matter or thing, for the recovery whereof the said Wardens or Commissioners have instituted any suit, cause or action, but the same shall and lawfully may be carried on by the said Mayor, Aldermen and Citizens, in the names of the said Wardens or of the said Commissioners, as the case may require, to final judgment, execution and recovery, as fully and effectually as the same might or could have been done by the said Wardens or Commissioners, had this act not been passed; *And provided further,* That all and every matter and thing that has been commenced, begun or entered upon by the said Wardens and Commissioners, or either of them, in pursuance of the powers and authorities in them vested, shall be of the same force and effect, as if this act had not been passed, and may, from and after the said first day of June next, be proceeded in and carried into effect, agreeably to the directions of this act, as fully as the same might or could have been done by the said Wardens and Commissioners, or either of them, had this act not been made; and for this purpose, all contracts and agreements made or entered into by the said Wardens and Commissioners, or either of them, in pursuance of the powers in them legally vested, or which they, or either of them, shall, in manner aforesaid, enter into before the said first day of June next, shall be equally binding upon the said Mayor, Aldermen and Citizens, and upon the person or persons with whom the same have been or shall be made, as if the same had originally been made and entered into by and between them.

How the duties of the Wardens and Commissioners may be discharged.

SECT. XXXV. *And be it further enacted by the authority aforesaid,* That, from and after the said first day of June next, the Mayor, Recorder, Aldermen and Common Council-men shall be, and they are hereby, fully authorized and empowered, either by themselves, or by proper persons for that purpose to be by them appointed, to do, perform and execute all such matters and things, as the said Wardens and Street Commissioners were, at and immediately before the passing of this act, respectively authorized or enabled by law to do. (p)

(p) This section is altered by the act of the 2d of April, 1790. (Note to former edition.)

SECT. XXXVI. *And be it further enacted by the authority aforesaid,* 1789.
 'That, from and after the said first day of June next, the Mayor or Recorder, and four of the Aldermen, shall be, and they are hereby fully authorized and empowered, either by themselves, or by proper persons to be by them for that purpose appointed, to do, perform and execute all such matters and things, as the said Wardens and Street Commissioners respectively were, at and immediately before the passing of this act, authorized or enabled by law, to do and perform, in conjunction with any Justice or Justices of the Peace of and for the city and county of Philadelphia, or of either of them. And for the several purposes aforesaid, it shall and may be lawful for the said Mayor, Recorder, Aldermen and Common Council-men, in Common Council assembled, to make, ordain and establish such ordinances, regulations and provisions, concerning the same, as by them shall be deemed necessary and expedient; and also to allow and make such rewards and compensation to the several officers of the said Corporation, and persons to be employed in the service thereof, as shall be just and reasonable. *Provided nevertheless,* That the consent and approbation of the Mayor or Recorder, and of a majority of the Aldermen, and also of the Common Council-men, who shall, from time to time, be present, and in Common Council assembled, shall be necessary to the making, ordaining or establishing of any such rules, regulations, appointments, laws, ordinances and constitutions, as the said Mayor, Recorder, Aldermen and Common Council-men, in Common Council assembled, are, in and by this act authorized or empowered to make, ordain or establish. (q)

Certain matters to be performed by the Mayor or Recorder, and Aldermen, before entrusted to the Wardens and Street Commissioners.

SECT. XXXVII. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful for the Mayor, or Recorder, Aldermen and Common Council-men, in Common Council assembled, from time to time, to permit and licence such and so many brokers within the said city, and under such rules and regulations, as they may think proper; and to prohibit all other persons from using or exercising the business of a broker therein, under such pains and penalties, as shall, from time to time, be ordained and established in manner aforesaid.

Of licensing brokers within the city.

SECT. XXXVIII. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful for the Mayor of the said city to nominate, and, from time to time, to appoint one or more Clerk or Clerks of the markets, who shall have assize of bread, wine, beer, wood, and other things within the said city, and shall do and perform all things belonging to the office of Clerks of the markets, within the said city.

Of appointing Clerks of the market, and their duty.

SECT. XXXIX. *And be it further enacted by the authority aforesaid,* That for the well governing of the said city, and the ordering of the affairs thereof, there shall be such other officers therein, and at such salaries, or other compensation, as the Mayor, Recorder, Aldermen and Common Council-men, in Common Council assembled,

Compensation of the officers of the corporation; and their qualification.

(q) This section is altered by the act of the 2d of April, 1790. (Note to former edition.)

1789. bled, shall direct; each and every of which said officer and officers shall, nevertheless, before entering on the duties of his office, take a solemn oath or affirmation, before the Mayor of the said city, for the time being, well and faithfully to perform and execute the same. (r)

All the rights, property, &c. of the old city corporation, vested in the new one.

SECT. XL. *And be it further enacted by the authority aforesaid,* That all the rights of the late corporation, known by the name of "The Mayor and Commonalty of Philadelphia, in the province of Pennsylvania," in and to all lands, tenements, hereditaments, ferries, wharves, markets, stalls, landings and landing-places, goods, chattels, monies and effects, whatsoever; and also all other lands, tenements and hereditaments, rights, franchises, liberties, privileges, goods, chattels, monies and effects, whereof any person or persons, or bodies politic or corporate, are seized or possessed, or which they, or any of them, hold or enjoy in trust for, or to and for the use of the citizens of the city of Philadelphia, or which the said citizens are, in any wise, entitled to, be, and they are hereby, severally and respectively, vested in the said corporation, or body politic, of the city of Philadelphia, and their successors, in and by this act established by the name, style and title aforesaid, to and for the use and benefit of the said citizens, and their successors, for ever; saving, nevertheless, to all and every person and persons, and bodies politic and corporate, his her and their just rights therein.

All the estates, &c. of the old corporation to be delivered to the new one.

SECT. XLI. And to the end and intent that all and singular the estate and estates, rights, privileges and interests aforesaid, may be had and received by the said Mayor, Aldermen and Common Council-men, and be by them and their successors faithfully applied to and for the use of the said citizens and their successors, for ever, *Be it further enacted by the authority aforesaid,* That all and every person and persons, and bodies politic and corporate, who are, or shall be, seized or possessed of the same, or of any part thereof, shall, on reasonable request, deliver the same to the said Mayor, Aldermen and Common Council-men, together with all deeds, writings, evidences, books and papers, touching and concerning the same, with proper assignments, where the same shall be necessary, and just, true and fair accounts thereof; and whoever shall fail herein shall be liable to be sued for the same, and shall, moreover, forfeit and pay to the said Mayor, Aldermen and citizens, any sum of money, not exceeding five hundred pounds, to be sued for and recovered in any Court of Record.

Of summoning the Common Council;

and a quorum thereof. [See act of 4th of April, 1796.]

SECT. XLII. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful for the Mayor or Recorder, for the time being, from time to time, as often as they, or either of them, shall see occasion, to summon a Common Council; [and that no assembly or meeting shall be deemed or accounted a Common Council, unless the Mayor or Recorder, and at least eight of the Aldermen and sixteen of the Common Council-men, shall be present.]

(r) This section does not vest the right of appointing the Clerk of the City Court in the corporation; but the power remains in the Governor. It relates only to officers necessary for the internal police of the city, and to salary officers *John v. Nicholls* in Supreme Court, Sept'r, 1792.

SECT. XLIII. *And be it further enacted by the authority aforesaid,* 1789.
That the said Mayor, Aldermen and Common Council-men shall, once in every year, cause to be published, a just and true account of all the monies which shall have accrued to them, in their corporate capacity, during the year next preceding such publication, and also of the disposition thereof; and shall also lay a copy thereof before the General Assembly.

The corporation to publish their accounts annually.

SECT. XLIV. *And be it further enacted by the authority aforesaid,* This act to be construed most favourably for the corporation.
That as often as any doubts shall arise touching this act, the same shall, in all courts of law and equity, and elsewhere, be construed and taken most favourably for the said corporation.

Passed 11th March, 1789.—Recorded in Law Book No. III. page 458.

CHAPTER MCCCLXXXIV.

A SUPPLEMENT to an act, entitled “An act more effectually to prevent unfair practices in the packing of beef and pork for exportation, and, to regulate the exportation of flaxseed, butter, and biscuit in kegs.”

SECT. I. WHEREAS the commercial reputation and general interest of this commonwealth has been greatly advanced by divers wholesome laws, subjecting the produce thereof to regular and careful inspection, and it is right and proper, that the exports from this state should conform, as nearly as may be found convenient, in package and value, with those of other countries, which are vended from time to time in the same foreign market: And whereas sundry defects in the law relating to salted beef and pork, passed the eighteenth day of August, one thousand seven hundred and twenty-seven, have been discovered by observation and experience:

[Original act vol. I, pa. 170, chap. 295.]

SECT. II. *Be it therefore enacted, and it is hereby enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same,* That, from and after the first day of November next, every tierce, barrel or half barrel, in which salted beef or pork shall be exposed to sale within this commonwealth, or exported therefrom, (except such as shall have been brought or imported from any place or places without the bounds and limits of this commonwealth, with the name of the state, town or place, from which the same shall have been brought or imported, branded, or marked at full length, and in a plain, legible manner thereon, and which shall be sold or exported as aforesaid, with the same name so as aforesaid branded or marked thereon, and not as the beef or pork of Pennsylvania,) shall be made of sound and well seasoned white oak timber, with at least fourteen good and substantial hoops thereon, which hoops shall be fastened and secured at each end of such tierce, barrel or half barrel, by iron nails, and at each bilge by wooden pins or pegs.

Dimensions, make, quality, and brand of the barrels, &c. for packing beef or pork for exportation.

[See act of 24th of Sept. 1789.]

SECT. III. *And be it enacted by the authority aforesaid,* That every tierce in which salted beef or pork (except as is before ex-

Contents of every tierce.

1789. cepted) shall be exposed to sale in this commonwealth, or exported therefrom as aforesaid, shall be of the gauge of forty-two gallons of wine measure, and shall contain three hundred pounds of sound and merchantable meat, well packed, and secured with salt and pickle; and if such tierce contains beef, it shall not have therein more than three legs or shins, and if it contains pork, it shall not have therein more than three heads.

Contents of every barrel;

SECT. IV. *And be it enacted by the authority aforesaid,* That every merchantable barrel of salted beef (except as is before excepted) which shall be exposed to sale in, or exported from this commonwealth, shall be of the gauge of twenty-eight gallons of wine measure, and shall contain no more than two shins. And every merchantable barrel of salted pork (except as is before excepted) which shall be exported from, or exposed to sale within this commonwealth, shall be of the gauge of twenty-nine gallons wine measure; and each shall contain two hundred pounds of cured meat, and no barrel of pork shall have more than two heads therein. And every half barrel of beef and pork shall be of the gauge of fifteen gallons of the measure aforesaid, and shall contain one hundred pounds of cured meat, and if beef, not more than one shin; and if pork, not more than one head. And every cask, whether tierce, barrel, or half-barrel, shall be distinctly branded with the name of the cooper or the person putting up the same.

and contents of every half barrel and cask.

Cooper's brand.

SECT. V. *And be it enacted by the authority aforesaid,* That every tierce, barrel or half barrel, in which salted beef or pork (except as is before excepted) shall be exposed to sale within this commonwealth, or exported therefrom as aforesaid, shall, before the sale or exportation thereof, be carefully inspected and examined by the Inspector of beef and pork for the time being, who shall pass as merchantable, and brand with the arms of this commonwealth, each and every tierce, barrel, and half barrel, being of the materials and dimensions herein before directed and described, and which shall respectively contain the quantity and quality of salted beef or pork herein before mentioned and required, packed and secured in the manner aforesaid. And the said Inspector for the time being shall (with a proper instrument for that purpose to be provided) erase, scratch out, and effectually deface, the cooper's or packer's brand mark and marks off and from each and every tierce, barrel or half-barrel, containing salted beef or pork, as aforesaid, which shall not be of the materials and dimensions herein before directed and described, and in which such beef or pork shall not be of the quantity and quality, and packed and secured in the manner herein before also directed and described; and if the same cannot be rendered merchantable according to the requisitions and meaning of this act, by salting, pickling, repacking, and coopering thereof, then the said Inspector for the time being shall impress and brand a distinct mark of a cross, thus X (each stroke of the said cross being at least three inches long) upon one head of every such tierce, barrel or half-barrel, containing beef or pork, so as aforesaid incapable of being rendered merchantable.

[See act of 24th of September, 1789, as to the brand mark.]

SECT. VI. *And be it enacted by the authority aforesaid,* That all 1789.
 and every person and person, who shall sell and deliver any tierce, ^{Of selling}
 barrel or half barrel of salted beef or pork (except as is before ex- ^{beef or pork}
 cepted) to the purchaser or purchasers thereof, before the same has ^{for exporta-}
 been duly examined by the said Inspector, and branded with the ^{tion before}
 arms of this commonwealth, in the manner herein before directed, ^{inspection or}
 or who shall refuse to allow and suffer the said Inspector, in the cases ^{contrary to}
 aforesaid, to erase, scratch out, and effectually deface the cooper's or ^{the act.}
 packer's brand mark and marks off and from any tierce, barrel or
 half barrel, and, if need be, to impress and brand thereon the said
 mark of a cross, as aforesaid, shall forfeit and pay for each and every
 tierce, barrel or half barrel, so sold and delivered, and for each and
 every tierce, barrel or half barrel, from which he, she or they shall
 refuse to allow and suffer the said cooper's or packer's brand mark
 and marks to be erased, scratched out, and effectually defaced, as
 aforesaid, and for each and every tierce, barrel or half barrel, where-
 on he, she or they shall refuse to allow and suffer the said mark of
 a cross to be impressed and branded, as aforesaid, the sum of ten
 shillings. And all and every person and persons, who shall, by any
 means whatsoever, wilfully erase, scratch out, and deface the said mark
 of a cross, after the same has been duly impressed and branded by the
 said Inspector upon any tierce, barrel or half barrel, as aforesaid, shall
 forfeit and pay the sum of ten pounds for each and every tierce, bar-
 rel or half barrel, off and from which the said mark of a cross shall
 be erased, scratched out and defaced; the said last two mentioned
 sums of money or forfeitures to be recovered and applied in the man-
 ner hereinafter provided and declared.

SECT. VII. *And be it further enacted by the authority aforesaid,* ^{Pay of the}
 That the said Inspector for the time being shall and may lawfully de- ^{Inspector.}
 mand, receive and take the sum of six-pence, and no more, for in-
 specting, examining and branding, as aforesaid, each and every
 tierce, barrel or half barrel, of salted beef or pork, which shall be
 sold at the port of Philadelphia, or exported therefrom, whether
 the same be sold for ship stores or exportation; and also the fur-
 ther sum of one shilling and six-pence for each tierce, and of one
 shilling for each barrel or half barrel, of salted beef or pork, which
 he, the said inspector, shall re-pack, together with such other and
 further allowance and compensation, as it shall and may be reason-
 able and customary to allow and give for the expense and trouble of
 cooperage, in putting the same into good and merchantable order
 and condition. *Provided nevertheless,* That it shall and may be
 lawful to and for the owner and owners of the said salted beef or
 pork to employ any person and persons, other than the said Inspect-
 or for the time being, to do, execute and perform the cooperage ne-
 cessary to put the same in good and merchantable order and condi-
 tion, as aforesaid; and in that case the said Inspector for the time
 being shall not be entitled to have and receive any allowance or
 compensation whatsoever, for or on account of the said cooperage. ^{But the coop-}
^{erage may}
^{be done by}
^{others as}
^{well as the}
^{Inspector.}

SECT. VIII. And whereas divers frauds and impositions have
 been committed in the package of sundry other commodities, as well

1789.

Of the pack-
age and in-
spection of
flaxseed for
exportation.

as salted beef and pork, the frequent repetition whereof must be equally injurious to the interest and reputation of the state, and which it is the duty and desire of the legislature, as far as may be, to prevent : *Therefore be it enacted by the authority aforesaid,* That from and after the first day of November next no flaxseed shall be exported from this commonwealth into the kingdom of Ireland, or into that part of Great-Britain called Scotland, before the same is well cleansed and prepared, nor in any other manner than is hereby described and directed; that is to say, the staves of each and every cask in which flaxseed shall be exported from this commonwealth, as aforesaid, shall be made of sound oak, and each and every of the said casks, besides a lining hoop on the outside round the chimes thereof, shall have at least twelve other good and substantial hoops thereon, and the same shall be fastened and secured by at least three iron nails in each of the chime hoops, and by the like number of iron nails in each of the quarter hoops; and each and every of the said casks shall be made as nearly straight as possible; and there shall be two sizes of the said casks, and no more, to wit, the largest size thereof shall be in length two feet and nine inches, and in diameter at each head twenty-four inches, and shall contain seven bushel of good and merchantable flaxseed; and the smaller size thereof shall contain three bushels and an half bushel of like good and merchantable flaxseed; and each and every of the said casks shall be branded with the initial letter of the christian name and surname, at full length, of the person who cleaned and prepared the flaxseed therein put up and contained : and if any cask or casks containing flaxseed, shipped with the intent to export the same, as aforesaid, not of the materials, make and dimensions, and shall not, respectively, contain the quantity and quality of flaxseed herein before directed and described, or if the said cask and casks have not been first duly branded as aforesaid, all and every person and persons, who shall ship the same as aforesaid, shall forfeit and pay the sum of twenty shillings for each and every cask which shall not be of the materials, make and dimensions, or which shall not respectively contain the quantity and quality of flaxseed herein before directed and described; and shall also forfeit and pay the further sum of five shillings for each and every cask so shipped, which hath not been first duly branded as aforesaid; the said two last mentioned sums of money or forfeitures to be recovered and applied in the manner hereinafter provided and declared.

[SECT. IX. Of the package of butter for exportation. Repealed 7th of January, one thousand eight hundred and four, chap. 2391.]

Of the pack-
age of bis-
cuit for
exportation.

SECT. X. *And be it further enacted by the authority aforesaid,* That, from and after the first day of August next, each and every keg in which biscuit shall be exported from this commonwealth, or therein exposed to sale for exportation, shall contain at least seven pounds of good and merchantable biscuit. And all and every person and persons, who shall, at any time from and after the said first day of August next, export biscuit from this commonwealth, or therein expose the same to sale for exportation, in any keg or kegs,

containing a less quantity and inferior quality of biscuit, than is hereby directed, shall forfeit and pay the sum of five shillings for every keg so exported, or exposed to sale for exportation, contrary to the meaning and direction of this act; to be recovered and applied in the manner hereinafter provided and declared. 1789:

SECT. XI. *And be it further enacted by the authority aforesaid,* That all and singular the forfeitures and penalties in and by this act, or the act to which this is a supplement, set, declared, appointed and imposed, shall be, one-half thereof to the guardians of the poor in the city of Philadelphia, for the use and benefit of the poor of the said city, and the districts annexed thereto, and the other half thereof to the informer, or him, her or them, who will sue for the same, to his, her or their own use and benefit; and if the said forfeitures and penalties be under the sum of ten pounds, the same shall and may be sued for, and recovered in like manner as debts under ten pounds may be sued for and recovered within this commonwealth, or if the said forfeitures and penalties be above the said sum of ten pounds, the same shall and may be sued for and recovered by bill, plaint or information, in any court of record within this commonwealth, wherein no essoin, protection, or wager of law, nor more than one imparlance shall be allowed.

SECT. XII. *And be it further enacted by the authority aforesaid,* That so much and no more of the said recited act, entitled "An act more effectually to prevent unfair practices in the packing of beef and pork for exportation," passed the said eighteenth day of August, in the year of our Lord one thousand seven hundred and twenty-seven, as is by this act altered, or supplied, be, and the same is hereby, repealed, annulled, and made absolutely void, any thing therein contained to the contrary thereof, in any wise, notwithstanding.

Passed 12th March, 1789.—Recorded in Law Book No. III. page 472.

CHAPTER MCCCLXXXVII.

An ACT in aid of the Callow-hill Market, in the township of the Northern-Liberties.

SECT. I. WHEREAS the holding of open market at a fixed and known place, where buyer and seller may at stated times meet together, has been found by long experience to be beneficial to both, not only by presenting before the buyer a greater choice as to kind and quality, according to his ability to purchase, but also by affording to the seller a better and more steady price for his provisions, according to their goodness and just value, and a more certain and expeditious sale thereof: And whereas convenient market-houses have, at a considerable expense, been erected in the township of the Northern-Liberties, in the county of Philadelphia, which by law are declared to be a public market-place for the buying and selling of all sorts of provisions, victuals, and things of the country produce and manufacture, and is commonly known by the name of Callow-

Forfeitures and penalties, how to be recovered and applied.

Repeal of so much of the former as is affected by this act.

[Ante. page, 68, chap. 1015, and page 331, chap. 1159.]

1789. hill Market, and there hath been chosen a Clerk of the Market, to make assay of weights and measures, and to do and perform all things belonging to the office of a Clerk of the market, within the said township, and other officers tending to the good order thereof: And whereas the practice made use of in the said township by butchers and others, hawking, from door to door, meat, poultry, and other kinds of food for man, usually sold in the city of Philadelphia in open market, has, in great measure, defeated the good and salutary purpose for which the said market-houses were erected, and thereby those victuallers and others, who have hired stalls in and attended the said market-place, have become great sufferers: For remedy whereof,

SECT. II. *Be it enacted, and it is hereby enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same,* That, from and after the publication of this act, if any victualler or butcher, or other person, shall hawk from door to door, or by any means sell, or offer to sale, within the said township, any beef, veal, mutton, lamb, goat, kid, pork, cheese, butter, poultry, eggs, or other food for man, usually sold in the city of Philadelphia in open market, at any place or places other than in the said Callow-hill Market (vegetables only excepted) he or they shall forfeit double the value thereof, one-half of the said forfeiture to the use of the said market, to be paid to the Superintendants thereof, for the time being, and the other half thereof to the person or persons who shall prosecute within one month after the offence shall be committed.

Provided always, That nothing herein contained shall extend to any person selling within his or her own dwelling-house, or to any person, not a victualler or butcher, bringing any provisions aforesaid, from any distance greater than five miles from the said township; or to the selling, or offering to sale, while alive, any cattle, calves, sheep, lambs, goats, kids, or hogs; nor to any such sale made at a greater distance than two miles northward of the north side of Vine-street, in the city of Philadelphia.

Passed 18th March, 1789.—Recorded in Law Book No. III. page 480.

CHAPTER MCCCLXXXIX.

A SUPPLEMENT to the several acts of General Assembly respecting public Auctions and Auctioneers.

SECT. 1. WHEREAS certain public auctions are by the laws of this commonwealth permitted and established for the sale of estates, real and personal, within the city of Philadelphia, the township of the Northern-Liberties, and the district of Southwark, under certain rules and regulations; and all other persons, than the Auctioneers duly appointed and licenced in pursuance of the said laws (except as in and by the said laws are excepted) are prohibited from selling at public auction within the said city, township or district, any estates, real or personal, under the pains and penalties in and by

Penalty on hawking meat, &c. in any other place than Callow-hill Market.

But this act not to prevent persons selling provisions in their own houses, &c.

[See vol. 1, page 509, chap. 908, and the notes thereto subjoined.]

1789.

the said laws mentioned : And whereas it is necessary to amend the said laws in such a manner as to prevent evasions thereof, by unlicensed auctions being opened and held in the suburbs of the said city :

SECT. II. *Be it therefore enacted, and it is hereby enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same, That* it shall and may be lawful for the President or Vice-President in Council to appoint and licence, as often as occasion shall require, one Auctioneer, for the sale of estates, real and personal, within the township of Moyamensing, who shall continue for and during the will and pleasure of the said President and Council, and shall give bond to the President and his successors, with two sufficient sureties, in the sum of two thousand pounds, for the faithful discharge of his duty, and for well and truly performing the terms and payments in and by this act, and the several acts of General Assembly to which this is a supplement, directed and required ; and the said Auctioneer, who shall be appointed and licenced in pursuance of this act, shall have the like powers and authorities, within the said township of Moyamensing, and be under the like rules, regulations, provisions and directions, and subject to the like pains and penalties, with any Auctioneer for the city of Philadelphia, the township of the Northern-Liberties, or the district of Southwark.

An auctioneer to be appointed for Moyamensing.

His surety ;

powers, and duties,

SECT. III. And whereas, by the operation of the present laws for regulating auctions and vendues, sundry inhabitants, residing within the distance therein prescribed, are subjected to the payment of a tax, from which the other citizens of the state are exempted : For remedy whereof, *Be it enacted by the authority aforesaid, That*, from and after the passing of this act, no duty shall be paid on the sale of any real estate, nor on the sale of any household furniture, or wearing apparel, which has actually been in use, nor on any ship or vessel, the property of any subject or subjects of the United States, or any of them.

Articles exempted from the auction duties.

SECT. IV. And to the end and intent that the provisions herein contained may not prove ineffectual, *It is hereby further enacted by the authority aforesaid, That* all and every act and acts of General Assembly of this commonwealth, respecting any auction or auctions, or Auctioneer, or person or persons using or exercising the business thereof, within the said city of Philadelphia, the township of the Northern-Liberties, or the district of Southwark, and all the rules, regulations, provisions and directions, pains and penalties, in the said acts of General Assembly, or in any of them, contained, shall extend, and they are hereby extended to all and every place and places within two miles of the State-house in the said city of Philadelphia, and to all persons who shall, within the same distance therefrom, offend against, or not govern themselves conformably to, the directions of this act, or of the said acts of General Assembly, to which this is a supplement, or of any of them.

The penalties for selling by auction extended to the distance of two miles from the State-house.

Passed 19th March, 1789.—Recorded in Law Book No. III. page 478.

1789.

CHAPTER MCCCXCII.

An ACT empowering certain trustees, therein named, to sell and dispose of a certain house and lot of ground, situate in the town of Easton, and county of Northampton, and to appropriate the monies arising from the sale thereof, towards the purchase of a parsonage or dwelling-house for the minister of the four Protestant Evangelic Reformed German congregations, to wit, that of Easton, Bethlehem, Plainfield and Greenwich townships, for the time being.

Passed 21st March, 1789.—Private Act.—Recorded in Law Book No. III. page 482.

CHAPTER MCCCXCVII.

An ACT for the incorporation of the College of Physicians of Philadelphia.

Passed 26th March, 1789.—Private Act.—Recorded in Law Book No. III. page 490.

CHAPTER MCCCC.

A SUPPLEMENT to the several acts of Assembly for the relief of insolvent debtors.

[See vol. 1. pa. 181, chap. 315 and the notes thereto subjoined.]

SECT. I. WHEREAS, by the laws of this commonwealth, no person is entitled to the benefit of the several acts of Assembly made for the relief of insolvent debtors, unless he or she shall have resided therein for the space of two years next before his or their imprisonment; and it is thought expedient to alter the same, under certain limitations and restrictions, in order to prevent the necessity of frequent applications to the legislature, by persons who may be unable to make payment, and who are nevertheless without relief under the existing laws:

SECT. II. *Be it therefore enacted, and it is hereby enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania in General Assembly met, and by the authority of the same,* That so much of the laws of this commonwealth, as deprives any person or persons, by reason of his, her or their not having resided therein for the space of two years next before his, her or their imprisonment, of the benefit of, or relief under, all or any of the acts of General Assembly made for the relief of insolvent debtors, shall, as against him, her or them, at whose suit or suits any such person or persons is, are, or shall be imprisoned, and so far as relates or shall relate to the debt or debts due to such plaintiff or plaintiffs, if the same shall not in the whole exceed the sum of one hundred pounds, be, and they are hereby repealed, and made null and void.

SECT. III. *And be it further enacted by the authority aforesaid,* That at all times, from and immediately after the passing of this act, the like benefit and relief, which by the laws of this commonwealth made for the relief of insolvent debtors, may or can be af-

Relief extended, as to the past, to insolvent debtors, who have not resided here two years;

and, also, as to such insolvents in future.

forded to any of the inhabitants thereof, who have resided therein for the space of two years next before his, her or their imprisonment, shall be extended and afforded, under the same rules, regulations, exceptions and restrictions, and on the same terms and conditions, to all and every such person and persons, as are in and by the said acts of General Assembly, or any of them, mentioned, notwithstanding he, she or they has or have not resided, or shall not have resided, within this commonwealth for any time before his, her or their imprisonment. 1789.

[*Provided nevertheless*, That nothing herein contained shall extend to, or operate against any other creditor or creditors of any such insolvent debtor or debtors, than him, her or them, at whose suit or suits such insolvent debtor or debtors is, are or shall be imprisoned: *And provided further*, That the provisions herein contained shall not extend to any person, who is or shall be imprisoned, at the suit or suits of one or more person or persons, for any debt or debts exceeding one hundred pounds in the whole.]

But not to operate against any other but the plaintiffs; nor if the debts exceed 100 pounds. [See act of 16th Feb'y, 1792.]

SECT. IV. And whereas it has been found, on experience, that the long confinement for small debts, fines or forfeitures, of those who are incapable of making satisfaction, tends to the distress of their families, as well as to the public injury, by the burthens created, and idle habits contracted thereby: For remedy whereof, *Be it further enacted by the authority aforesaid*, That every person who now is, or hereafter shall be confined in any gaol within this commonwealth, in execution or otherwise, for any debt or debts, sum or sums of money, or fine or fines, forfeiture or forfeitures, none of which do or shall exceed the sum of five pounds, exclusive of costs, and has or shall have remained so confined for the space of thirty days, shall be discharged from such confinement, and not be liable to be again imprisoned for the same; and the Sheriff, Gaoler or Keeper of the gaol, in which such person is or shall be confined as aforesaid, shall, upon application to him by the person so confined, discharge him or her out of custody, if detained for such debt or debts, sum or sums of money, fine or forfeiture, only, and for no other cause.

Relief in cases of imprisonment for small debts, fines and forfeitures.

Passed 27th March, 1789.—Recorded in Law Book No. III. page 491.

CHAPTER MCCCCI.

An ACT for granting trials at *Nisi Prius* in the county of Philadelphia.

SECT. I. WHEREAS the periods for holding the several terms of the Supreme Court at Philadelphia have, by experience, been found too short for the despatch of and expediting the business of the said court, owing partly to the great length of time necessary to the discussion of many important and complex cases, which have been there determined, whereby many other trials have been unavoidably postponed, and partly to a portion of each term being necessarily allotted for arguments of points of law, and motions in actions removed from the several counties in the state; and it is con-

[See the notes to chap. 255, vol. 1, pa. 131, for all the acts respecting the judiciary system, and the various alterations therein.]

1789.

ceived, that a power in the said court to hold courts of *Nisi Prius*, for the trial of such issues in fact as are or shall be depending in the said Supreme Court, either by removal, or otherwise, from the city or county of Philadelphia, would greatly expedite the determination of the business in the said Supreme Court, and be a greater relief to such suitors, as should not be able, from want of time, to procure trials at bar :

SECT. II. *Be it therefore enacted, and it is hereby enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same,* That, from and after the passing of this act, the Justices of the said Supreme Court in term time, or a majority of them in vacation, shall be empowered, and they are hereby enjoined, when occasion shall require, to direct the holding of courts of *Nisi Prius* in the city of Philadelphia, for the city and county of Philadelphia, before them, or any one or more of them, on such days and times as they shall nominate and appoint, and, for that purpose to direct the usual process to issue, returnable at such times, during the sitting of the same courts of *Nisi Prius*, as they shall see fit, for the trial of all such issues in fact as are or shall be depending in the said Supreme Court, in pleas, either civil or criminal, originally instituted in the said Supreme Court, or brought thither by writs of removal, appeals, or otherwise, from any civil or criminal jurisdiction in the city or county of Philadelphia, already erected, or hereafter to be erected; and, generally, to do, execute and perform all and every such acts, matters and things, and put in practice all such powers, authorities, jurisdictions and privileges, as by the present existing laws relative to courts of *Nisi Prius* for other counties within this commonwealth, or which in any manner respect the same, are enjoined and required of, or are given and granted to, the said Justices of the said Supreme Court, or to any one of the same Justices.

SECT. III. And whereas rules for the striking of special juries are often taken by defendants in the said court, for the mere purpose of delaying the recovery of undisputed debts, which practice has also a tendency to postpone the determination of litigated causes: *It is therefore enacted by the authority aforesaid,* That no rule, on the defendant's application, for a trial by special jury in the said Supreme Court, or at *Nisi Prius*, of any issue, in any of the said civil actions, except in cases where the title to real estate shall be in question, shall hereafter be granted, unless the defendant, or some person for him, shall previously make and file an affidavit in the said court, that he conceives there is a just and legal cause of defence against the plaintiff's demand in the said action, or against some part thereof.

SECT. IV. *And be it further enacted by the authority aforesaid,* That so much of an act of General Assembly, entitled "An act for the better regulation of juries," as provides or enacts, "that every special jury shall be struck thirty days, at the least, before the day of the return of the process for summoning such jury to attend; and that the party entering a rule for such special jury shall forthwith serve a copy thereof on the attorney of the other party, together with a copy of the list of jurors so to be struck, and due notice to

The Supreme Court may direct courts of *Nisi Prius* in Philadelphia county. [See act of 20th of March, 1810.]

No rule for a special jury, on the application of defendants, to be allowed, without affidavit of a defence.

Repeal of the section respecting the striking of special juries.

[The whole of the act recited in this section has been since repealed.]

attend to strike the same, at the office of the Prothonotary or Clerk of the Court," shall be, and the same is hereby, repealed, and made null and void. 1789.

Passed 27th March, 1789.—Recorded in Law Book No. III. page 495-6. (s)

(s) See an act passed April, 1811, of Philadelphia, for the trial of civil for establishing a new court in the city causes.

CHAPTER MCCCCII.

An ACT to prevent the granting of Special Courts on the plaintiff's application.

SECT. I. WHEREAS the granting of Special Courts, on the application of plaintiffs, under pretence of their sudden departure out of this commonwealth, has been found, on experience, to be attended with much injury to the good people thereof, by giving to foreigners an undue preference in the decision of causes: For remedy whereof,

SECT. II. *Be it enacted, and it is hereby enacted, by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same, That so much of an act of General Assembly of this commonwealth, entitled "A supplement to an act, entitled "An act for establishing courts of justice in this province,"* as authorizes or requires the Justices of the Supreme Court, or of any Court of Common Pleas within this commonwealth, to grant to any plaintiff or plaintiffs a special court or courts, or to hear and determine any suit, cause or action, without the usual imparlances, be, and the same is hereby, repealed.*

Special courts not to be granted on the motion of plaintiffs. (* Ante. pa. 17, chap. 955.)

Passed 27th March, 1789.—Recorded in Law Book No. III. page 494.

CHAPTER MCCCCIII.

An ACT to prevent the importation of convicts into this commonwealth.

SECT. I. WHEREAS it hath been represented to this House by the United States in Congress assembled, that a practice prevails of importing felons convict into this state, under various pretences, which said felons convict, so imported, have been sold and dispersed among the people of this state, whereby much injury hath arisen to the morals of some, and others have been greatly endangered in their lives and property: For remedy whereof,

SECT. II. *Be it enacted, and it is hereby enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same, That, from and after the first day of May next, no captain or master of any vessel, or any other person or persons, shall knowingly or willingly import, bring or send, or cause or procure to be imported,*

Penalty on importing felons convict into this state.

1789. brought or sent, or be aiding or assisting therein, into this commonwealth, by land or water, any felon convict, or person under sentence of death, or any other legal disability, incurred by a criminal prosecution, or who shall be delivered or sent to him or her from any prison, or place of confinement, in any place out of the United States.

Punishment
for import-
ing convicts.

SECT. III. *And be it further enacted by the authority aforesaid,* That every captain or master of a vessel, or any other person, who shall so as aforesaid import, bring or send, or cause or procure to be imported, brought or sent, or be aiding and assisting therein, into this commonwealth, by land or water, or who shall, as factor or agent of the person or persons so offending, or, as consignee, sell, or offer for sale, any such person as above described, knowing him or her so to be, shall suffer three months imprisonment, without bail or mainprize, and shall forfeit and pay, over and beyond the costs of prosecution, for every such person so brought, imported or sent, or caused or procured so to be, or sold or offered for sale, fifty pounds, lawful money of Pennsylvania, one half thereof to the commonwealth, and the other half to him or her who shall sue or prosecute for the same; which said penalty shall be recovered by action of debt, or information, in any court of record; and the defendant, or person sued, or impleaded therefor, shall be ruled to give special bail, in like manner, and under the same rules, as is usual in actions of debt founded on contract.

Recogni-
zance to be
given to
transport
such convicts
out of the
United
States.

SECT. IV. *And be it further enacted by the authority aforesaid,* That every person who shall offend against this act, or any thing herein contained, shall, on conviction thereof, be adjudged and ordered to enter into a recognizance, with sufficient sureties, to convey and transport, within such reasonable time as shall be ordered and directed by the court, to some place or places without the bounds, limits and jurisdiction of the United States, every such felon convict, or other person of the description aforesaid, which he or she shall have been convicted of having brought, imported or sent, or having been aiding or assisting therein, into this commonwealth, against the true intent and meaning of this act, or of having so as aforesaid sold, or offered for sale; and in default of entering into such recognizance, with sufficient sureties, as aforesaid, he or she shall be committed to gaol, there to remain, without bail or mainprize, until he or she shall enter into such recognizance, with such sureties, as aforesaid, or until he or she shall cause every such person so as aforesaid by him or her imported, brought or sent, or caused or procured to have been imported, brought or sent, or that he or she shall have been aiding or assisting in the importing, bringing or sending, into this commonwealth, against the true intent and meaning of this act, or that he or she shall have been convicted of having so as aforesaid sold, or offered for sale.

Passed 27th March, 1789.—Recorded in Law Book No. III. page 497.

CHAPTER MCCCXXI.

1789.

An ACT to incorporate the Newton Library Company, in Bucks county.

Passed 27th March, 1789.—Private Act.—Recorded in Law Book No. III. page 492.

CHAPTER MCCCXXIV.

An ACT to enable the owners and possessors of a certain tract of marsh and meadow land, therein described, situate in the county of Chester, to keep the banks, dams, sluices and floodgates, in repair, and to raise a fund to defray the expense thereof.

[See chap. 577 and 497, vol. 1.]

Passed 4th September, 1789.—Private Act.—Recorded in Law Book No. III. page 518.

CHAPTER MCCCXXV.

An ACT to erect Wyoming township and that part of Catawissey, and Mahoning townships, herein after described, in the county of Northumberland, into a separate election district.

SECT. I. WHEREAS the freemen of Wyoming township, and part of the freemen of Catawissey and Mahoning townships, in the county of Northumberland, have, by their petitions, set forth, that they labour under very great inconveniencies, on account of the distance many of them live from the place of holding the annual election, as well as on account of the bad roads they are obliged to pass over in their way to the said elections: For the remedy whereof,

SECT. II. *Be it enacted, and it is hereby enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same, That all the freemen living within the following bounds, viz. beginning at a place, known by the name of the Bear Gap of Roaring creek, thence down the same creek about three miles, thence with a straight line to the head branch of Little Roaring creek, thence down the same to the north-east branch of the river Susquehanna, thence down the same to the lower end of James Cochran's plantation, thence across the river by a north line, to be run through the township of Mahoning, to the northern boundary thereof, including all Wyoming township, and all those parts of Catawissey and Mahoning townships that are north and east of said lines, in the county of Northumberland aforesaid, shall, from and after the passing of this act, be struck off and separated from the first and second districts in the said county, and established and erected into a separate district, called the seventh district in the county of Northumberland aforesaid, and that the freemen of the said seventh district now erected, as aforesaid, shall hold their elections at the house of Samuel Boon, near the mouth of fishing creek, any thing in a former law, obliging*

The seventh election district of Northumberland county created.

1789. the inhabitants of this last erected district to attend their elections at the county town, or at the town of Northumberland, notwithstanding.

Passed 7th September, 1789.—Recorded in Law Book No. III. page 525.

CHAPTER MCCCCXVII.

An ACT for separating Newberry township, in the county of York, from the fifth, and annexing the same to the first election district of that county, and to enable the freemen of Manahan, Warrington, Huntingdon, and Reading townships, to hold their general elections at the house of William Butt.

SECT. I. WHEREAS it has been represented by the inhabitants of Newberry township, York county, that they labour under great inconveniences, in consequence of their being connected with the fifth election district, and praying to be detached from the same, and annexed to the first election district: And whereas it is represented by the freemen, inhabitants of Manahan, Warrington, Huntingdon, and Reading townships, being the residue of the fifth election district of York county, that they labour under inconveniences, in consequence of the place of holding their general elections being at the verge of the district, and praying they may be enabled to hold them at the house of William Butt, in Warrington township aforesaid: And whereas it appears just and reasonable, that the prayer of said petitioners should be granted:—

SECT. II. *Be it therefore enacted, and it is hereby enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same,* That, from and after the passing of this act, the township of Newberry, in the county of York aforesaid, shall be, and the same is hereby, separated from the fifth election district, and annexed to the first, and that the freemen of the said township of Newberry shall hold their annual elections at the court-house in the borough of York, in the said county.

Newberry separated from the fifth election district of York county.

SECT. III. *Be it further enacted by the authority aforesaid,* That, from and after the passing of this act, the freemen, inhabitants of Manahan, Warrington, Huntingdon, and Reading townships, in the county of York, shall hold their general elections at the house of William Butt, in Warrington township aforesaid, any law to the contrary notwithstanding.

The election of Manahan, &c. where to be held.

SECT. IV. *And be it further enacted by the authority aforesaid,* That so much of the act, entitled “A Supplement to the act, entitled “An Act to regulate the general elections of this commonwealth, and to prevent frauds therein,” as obliges the freemen, inhabitants of Newberry township, in the county of York aforesaid, to hold their annual election in the fifth district of the same county, be, and the same is hereby, repealed and made void.

Repeal of part of the former law.

Passed 7th of September, 1789.—Recorded in Law Book No. III. page 526.

CHAPTER MCCCCXVIII.

1789.

An ACT to divide the county of Luzerne into election districts.

SECT. I. WHEREAS the freemen of the county of Luzerne have by their petitions to this House prayed, that the said county may be divided into election districts, and it is conceived that the same would contribute to their ease in attending their general elections:

SECT. II. *Be it therefore enacted, and it is hereby enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same, That,* from and after the passing of this act, the county of Luzerne shall be, and the same is hereby, divided into five election districts, for the purpose of holding the general elections; and that part of the county aforesaid, beginning at the north line of the state of Pennsylvania, and extending down and including both sides of the river Susquehanna, to a line drawn east and west across the county, at Wyalusing falls, shall be an election district, by the name of the Tioga district, and the freemen thereof shall meet at the house now occupied by Simon Spalding, and hold their elections; from the line last mentioned to a line drawn from the mouth of the Falling spring easterly, on the Lackawanna mountain, to the northerly part of Providence township, thence east to the east line of the county, and a line drawn from the said Falling spring west to the west line of the county, shall be an election district, by the name of Tunkhannock district, and the freemen thereof shall meet at the house now occupied by Gideon Osterhout, and hold their elections; from the Falling spring down the Susquehanna river on the east side, so far as to include Newport township, thence east to the east line of the county, thence northerly on the said line to the Tunkhannock district, thence westerly on the line of Tunkhannock district to the place of beginning, shall be an election district, by the name of Wilkesbarre district, and the freemen thereof shall meet and hold their elections at the Court-house in Wilkesbarre; from a point on the west side of Susquehanna river, opposite the Falling spring, down the said river to Henlock's creek, thence up said creek to the head thereof, thence west to the west line of the county, thence northerly on said line to the Tunkhannock district, thence east on the line of Tunkhannock district to the point, the place of beginning, shall be an election district, by the name of Kingstown district, and the freemen thereof shall meet at the house now occupied by Lawrence Myers, and hold their elections; and all the lands within the county aforesaid, between the southerly lines of the two last mentioned districts, and the southerly line of the county, shall be an election district, by the name of Salem district, and the freemen thereof shall meet at the house now occupied by Nathan Beach, and hold their elections; any thing to the contrary hereof in any former law contained, notwithstanding.

Luzerne
county
divided into
five election
districts.

Passed 7th September, 1789.--Recorded in Law Book No. III, page 527.

1789.

CHAPTER MCCCCXXI.

An ACT to authorize George Frey, of Middletown, in the county of Dauphin, to support a mill-dam across Sweetara creek; and to oblige him to maintain a free navigation for boats, and other craft, along his mill race, into his mill-dam.

SECT. I. [GEORGE FREY, his heirs and assigns, empowered to support and maintain a mill dam over *Sweetara* creek, in the county of *Dauphin*, in such manner as to enable the fish at all times to pass and repass, &c. with as little obstruction as may be; provided the water in said dam (except in floods) shall not be more than three feet higher than it would have been, had there been no dam erected. The race to be at all times effectually supplied with water, for boat and canoe navigation, free from toll, or other charge, with as much ease, and little impediment to navigation as may be; and the act of March ninth, one thousand seven hundred and seventy-one, (vol. 1, page 324, chap. 627,) so far repealed. Penalty for neglect, and non performance of the provisoes and conditions of this act.]

Passed 11th September, 1789.—Recorded in Law Book No. III. page 531.

CHAPTER MCCCCXXII.

A further SUPPLEMENT to the act, entitled "An Act to prevent the exportation of bread and flour not merchantable, and for repealing, at a certain time, all the laws heretofore made for that purpose."

SECT. I. WHEREAS the species of wheat flour commonly called middlings, having become a considerable article of exportation, it is necessary to fix a standard for its quality and fineness, in order to establish its reputation abroad :

SECT. II. *Be it enacted, and it is hereby enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same, That* from and after the first day of November next, all flour of wheat, commonly called middlings, which shall be brought to any part within this state for exportation, shall be packed in casks made of good seasoned materials, of the like dimensions, and hooped, nailed and branded with the brand of the miller or bolter, and with the number of the cask, and weight of the flour therein, in like manner as in and by the act, entitled "*An Act to prevent the exportation of bread and flour not merchantable, and for repealing, at a certain time, all the laws heretofore made for that purpose,*" is directed, and under the like penalties and forfeitures, as are therein specified as to the flour called merchantable; and moreover, each cask shall be removed from the mill or bolting-house where the same shall have been first packed; and that from and after the said first day of November next, no merchant or other person whatsoever shall lade or ship any such middlings on board any ship or vessel, for exportation

[Original act, vol. I, p. 523, chap. 925, and see the notes thereto subjoined.]

Middlings, how to be packed;

branded;

out of this state, before the same shall be offered to the view and examination of the inspectors of the port or place, from whence the same shall be intended to be exported, and before the same shall be inspected, approved and adjudged by the said inspector, his deputies (or three persons to be appointed by one of the magistrates, in the manner by the said recited act directed as to merchantable flour) to be of a due degree of fineness and quality to be exported as middlings; and the said inspector, or his deputy, shall try and search the same, and plug up the holes he shall make, in the same manner, and shall receive the same reward for inspecting the same, as by the said act is directed concerning merchantable flour. 1789.

SECT. III. *And it is further enacted by the authority aforesaid,* That if the said inspector, or his deputies, or the three persons to be appointed by the magistrate as aforesaid, shall adjudge and determine that any such flour of wheat, so to be branded "Middlings," shall not be of a due fineness and quality to be exported as and for middlings, he or they shall cause the said word middlings, so branded, to be scratched out and obliterated, and the owner of such middlings, or the person or persons offering or intending the same for sale or exportation, shall pay, for the inspection thereof, the same reward, as if the same had been adjudged to be fit for exportation. Proceeding, in case the flour is condemned.

SECT. IV. *And it is hereby further enacted by the authority aforesaid,* That all and every the regulations, fines, penalties and forfeitures, in and by the said recited act, and the several supplements thereto, and by this act, made, imposed and inflicted on any person or persons, who should or shall grind, bolt, make casks for, pack, brand, after the same shall have left the mill or bolting-house, transport, export, or otherways have any thing to do with common or superfine flour, and who should or shall offend against the said recited act, or the supplement thereto, or against this act, shall, from and after the said first day of November next, extend, and be construed to extend to such persons and offences, as to the species of wheat flour called middlings, as fully and effectually as if the article middlings was inserted with flour in the said acts, or as if the said regulations, fines, penalties and forfeitures, were herein repeated. Regulations, fines, &c. in the case of other flour, extended to middlings.

SECT. V. And whereas the packing of wheat flour in half casks, containing ninety-eight pounds neat weight, although not warranted by the said recited act, or its supplements, has been practised, and is found to be beneficial in the stowage of ships and vessels: *It is therefore enacted by the authority aforesaid,* That it shall and may be lawful for millers and bolters to pack any flour of wheat, for exportation, in casks made of staves of the length of twenty-three inches, and of the diameter at each head of twelve inches and an half, such miller and bolter complying with all and every the directions of the said recited acts of Assembly, as to the casks No. 1, 2 and 3, therein mentioned, and subject to the same regulations, fines, forfeitures and penalties, and branding the said smaller casks No. 4, 98, after the said first day of November next. Alterations in the package of wheat flour

SECT. VI. And whereas one of the reasons for requiring all casks, wherein flour intended for exportation shall be packed, to be made of certain given dimensions, is to prevent the loss of space in

1789.

Penalty, in case casks are not of the legal dimensions ;

and how recoverable.

stowing the same in ships or vessels, and the non compliance with the said requisition is of material disadvantage to the merchants and owners of ships : And whereas the price of the casks (which under the said recited act was the measure of the penalty for such non-compliance) is by the general practice of selling flour by the barrel, sunk and confounded therewith: *It is therefore hereby enacted by the authority aforesaid,* That whenever any flour of wheat, sold for exportation, shall be offered to the view and examination of the said inspector, or his deputies, he or they shall, and each and every of them is hereby enjoined and required to view and measure each and every cask and casks thereof, and if they, or any of them, shall be found to vary from the dimensions in the said act, and in this act contained, the person or persons who shall have sold the same for exportation as aforesaid, shall forfeit and pay, for every cask thereof, which shall be found to vary as aforesaid, the sum of one shilling and six-pence, to be sued for and recovered by the said inspector, or his deputy or deputies, in like manner as other debts of the like amount may or can be sued for, and be recovered by the laws of this commonwealth, together with costs of suit, which, with all other the fines, forfeitures and penalties, imposed and directed to be levied by this act, shall be applied in like manner, as is directed by the act to which this is a supplement. (t)

Passed 12th September, 1789.—Recorded in Law Book No III. page 532.

(t) See an act passed 13th of February, 1811. Flour of rye and Indian corn may be packed in strong tight puncheons, made of good seasoned red oak, with pine or other heads, suitable for molasses casks, &c.

CHAPTER MCCCCXXIV.

An ACT for annexing part of the county of Washington to the county of Allegheny.

[For the act establishing the county of Allegheny, see ante. page 448 chap. 1346.]

SECT. I. WHEREAS the inhabitants of that part of the county of Washington, which is included in the boundaries hereinafter mentioned, have by their petition represented to this House their remote situation from the seat of justice, and prayed to be annexed to the county of Allegheny; and the prayer of the petitioners appearing just and reasonable :

Boundaries of the part of Washington annexed to Allegheny county.

SECT. II. *Be it enacted, and it is hereby enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same,* That all that part of Washington county, included by the following lines, viz. Beginning at the river Ohio, where the boundary line of the state crosses the said river, from thence in a straight line to White's mill, on Raccoon creek, from thence by a straight line to Armstrong's mill, on Miller's run, and from thence by a straight line to the Monongahela river, opposite the mouth of Perry's run, where it strikes the present line of the county of Allegheny, be, immediately after the running of the said lines, and the same is hereby annexed to the said county of Allegheny, and to all intents and purposes constituted a part of the same.

SECT. III. *And be it further enacted by the authority aforesaid,* 1789.
That the inhabitants of all that part of Washington county by this act annexed to the said county of Allegheny, shall, at all times hereafter, have and enjoy all and singular the jurisdictions, powers, rights, liberties and privileges, whatsoever, which the inhabitants of Allegheny county, or the inhabitants of any other county within this state, do, may, or ought to enjoy, by the laws of this state.

Rights and privileges of the inhabitants of the part of Washington annexed to Allegheny.

SECT. IV. *And be it further enacted by the authority aforesaid,*
That Peter Kidd and John Beaver, be, and they or either of them are and is hereby, authorized and directed to survey and mark the lines, agreeable to the directions of this act, for which service they shall be severally allowed twenty-five shillings per day each, and no more; and the charges so incurred shall be defrayed by the said county of Allegheny, and for that purpose levied and raised by the inhabitants thereof, in like manner with other public money by law raised and levied for the use of the said county.

Boundary lines to be marked.

SECT. V. *And be it further enacted by the authority aforesaid,*
That should it so happen that any of the election districts, heretofore established within the county of Washington, shall be separated and divided into parts by the running of the said lines, then, and in such case or cases, all such parts of such districts as shall be and remain within the county of Washington shall be, and they are hereby annexed to such other election districts within the said county of Washington, as shall be next adjoining to such parts of any such separated and divided districts, and the freemen of such parts thereof shall vote at their elections at the same places appointed by law for the holding of the elections of such districts, to which they shall be so as aforesaid annexed.

Provision in case any election district is divided.

Passed 17th September, 1789.—Recorded in Law Book No. III. page 535.

CHAPTER MCCCCXXV.


An ACT for erecting certain parts of Cumberland and Northumberland counties into a separate county.

SECT. I. WHEREAS it hath been represented to the General Assembly of this state, by the inhabitants of those parts of Cumberland and Northumberland counties, which are included within the lines hereinafter mentioned, that they labour under great hardships by reason of their great distance from the present seats of justice, and the public offices for the said counties: For remedy whereof,

SECT. II. *Be it enacted, and it is hereby enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same,* That all and singular the lands, lying within the bounds and limits herein after described and following, shall be, and are hereby, erected into a separate county, by the name of “Mifflin county,” namely; beginning at Susquehanna river, where the Turkey hill extends to the said river, then along the said hill to Juniata, where it cuts Tusca-

Mifflin county erected.

Boundaries thereof.

1789.  rora mountain, thence along the summit of the said mountain to the line of Franklin county, thence along the said line to Huntingdon county line, thence along the said line to Juniata river, thence up the said river to Jack's narrows, thence along the line of Huntingdon county to the summit of Tussey's mountain, thence along the lines of Huntingdon and Northumberland counties, so as to include the whole of Upper Bald Eagle township, in the county of Northumberland, to the mouth of Buck creek, where it empties into the Bald Eagle creek, thence to Logan's gap, in Nittany mountain, then to the head of Penn's creek, thence down the said creek to Sinking creek, leaving George M'Cormick's, in Northumberland county, thence to the top of Jack's mountain, at the line between Northumberland county and Cumberland, thence along the said line to Montour's spring, at the heads of Mahantango creek, thence down the said creek to Susquehanna river, and thence down the said river to the place of beginning.

Privileges of the inhabitants of the new county.

SECT. III. *And be it enacted by the authority aforesaid,* That the inhabitants of the said county shall, at all times hereafter, have and enjoy all and singular the privileges and jurisdictions which the inhabitants of any other county within this state do, may, or ought to enjoy by the constitution and laws of this state.

Of the judiciary of the new county. (Altered by the existing constitution.)

SECT. IV. *And be it further enacted by the authority aforesaid,* [That the Justices of the Peace commissioned at the time of passing this act, and residing within the bounds and limits of the said county, herein and hereby erected and constituted, shall be Justices of the Peace for the said county, during the time for which they were so commissioned, and they, or any three of them, shall and may hold courts of General Quarter Sessions of Peace. And the Justices of the Common Pleas, in like manner commissioned and residing, or any three or more of them, shall and may hold courts of Common Pleas in the said county, during the time they were so commissioned;] and the said courts of General Quarter Sessions of the Peace and of Common Pleas shall have all and singular the powers and authorities, rights and jurisdictions, to all intents and purposes, which any other courts of General Quarter Sessions and of the Common Pleas, in any of the other counties of this state, may, can or ought to have in their respective counties; and the said courts of Common Pleas shall sit and be held for the said county of Mifflin, on the second Tuesdays in the months of December, March, June and September, in each year, at the house now occupied by Arthur Buchanman, until a court-house shall be built, as hereafter directed; and the courts of Quarter Sessions of and for the said county shall open and commence on the days next preceding the opening of the said courts of Common Pleas, in each of the said months, in each year as aforesaid, until the time aforesaid, and then shall sit, and be holden and kept at the said court-house, on the days and times before mentioned.

Of the places of holding elections in the new county.

SECT. VI. *Be it further enacted by the authority aforesaid,* That the inhabitants of each township of the county hereby erected, qualified by law to elect, shall, at the usual places in their respective districts, as heretofore laid off from the counties of Cumberland and Northumberland, and which may now fall in the county hereby

erected, at the same time, and in like manner, as the inhabitants of the townships and districts of the other counties in the state, meet, and choose [Justices of the Peace,] Inspectors, Judges of elections for Representatives in the General Assembly, [a Councillor,] and other elective county officers, agreeably to the constitution and laws of this state, for the time being: *Provided always nevertheless,* That that part of Northumberland county, which is contained within the bounds of the said county of Mifflin, be and the same hereby is, erected into an election district; and that the freemen of the said district meet at the house now occupied by Enoch Hesting, and hold their elections. 1789.

SECT. VII. *And be it further enacted by the authority aforesaid,* That the Sheriff, Treasurer, Prothonotary, [Collector of excise,] and all such other officers, as have heretofore given security for the faithful performance of and discharge of their several offices, in the other counties of this state, and who shall hereafter be appointed or elected in the said county, before they, or any of them, shall enter upon the execution of their respective offices, duties and trusts, shall give sufficient security, in the like sums, and in the like manner and forms, and for the same uses, trusts and purposes, as such officers and persons, elected and appointed for the like offices, duties and trusts, are obliged by law to give in the county of Cumberland, for the time being. Of the county officers.

SECT. IX. *And be it further enacted by the authority aforesaid,* That John Oliver, William Brown, David Beale, John Stewart, David Bole and Andrew Gregg, of said county, be, and they are hereby appointed trustees for the county aforesaid, with full authority for them, or a majority of them, to purchase, or take and receive by grant, bargain, or otherwise, any quantity or quantities of land, not exceeding one hundred and fifty acres, on the north side of Juniata river, and within one mile from the mouth of Kishicoquilis creek, for the use, trust and benefit of said county, and to lay out the same into regular town lots, and to dispose of so many of them, as they, or any four of them, may think best for the advantage of said county, and they, or any four of them, are hereby authorized to sell and convey so many of them as they may think proper, and with the monies so arising from the sale of said lots, and with other monies to be duly assessed, levied and collected, within the said county of Mifflin, for that purpose, which it is hereby declared it shall and may be lawful for the Commissioners thereof to do, or cause to be done, to build and erect a court-house and prison, suitable and convenient for the public, on the public and such other square as shall be reserved for that purpose; and the said trustees shall, from time to time, render true and faithful accounts of the expenditures of the same, not only to the Commissioners, but to the Grand Jury, for inspection, adjustment and settlement of the accounts of said county. (t) Trustees for the county buildings of Mifflin.

SECT. X. *Be it further enacted by the authority aforesaid,* That the Justices of the Supreme Court, and of the courts of Oyer and Jurisdiction of the Supreme Court.

(u) Another trustee was added by an act of the 5th day of April, 1799. (Note to former edition.)

1789. Terminer and General Gaol Delivery of this state, shall have the like powers, jurisdictions and authorities, within the said county of *Mifflin*, as by law they are vested with and entitled to have and exercise in other counties of this state; and they are hereby authorized and empowered from time to time, to deliver the gaol of the said county of captured and other offenders, in the same manner as they are authorized and empowered to do in any other counties of this state.

extended to
the new
county.

Passed 12th September, 1789.—Recorded in Law Book No. III. page 536. (x)

(x) The sections inserted in this act were temporary, and are now obsolete, as,

§ 5. For the collection of the arrearages of taxes laid before the division of *Cumberland* county.

§ 8. The apportionment of representation between *Mifflin* and *Cumberland*.

§ 11. Process previously instituted in *Cumberland*, not to be affected by this act.

For alterations in the boundaries of this county, see chap. 1300, ante. page 417, and the act of 1st of April, 1791, (chap. 1533,) commissioners appointed to run the lines between *Huntingdon* and *Mifflin* by act of 30th September, 1791, (chap. 1585.)

A certain line between *Huntingdon* and *Mifflin*, on the south side of *Juniata* by act of 29th of March, 1792, (chap. 1606.)

That part of *Mifflin* taken from *Northumberland*, with parts of other counties, erected into *Centre* county, by act of 13th of Feb'y, 1800, (chap. 2092.)

By the last enumeration, the county of *Mifflin* contained two thousand four hundred and forty-one taxables: and, with the county of *Huntingdon*, five thousand two hundred and seven taxables; and by the act of March 21st, 1808, apportioning the representation in pursuance thereof, this county sends two members to the House of Representatives, and, in conjunction with *Huntingdon*, one member to the Senate.

Two election districts were established in this county, by act of 29th of September, 1789, (chap. 1444.)

Two additional districts established by act of 9th of April, 1791, (chap. 1550.)

Bald Eagle and part of *Potter* township, erected into a district, and place of holding elections in the residue of *Potter*, changed, by act of 13th of March, 1795, (chap. 1799.)

The district of *Fermanagh* and *Milford*, to hold their elections at *Mifflin* town school-house, by act of 8th of April, 1799, (chap. 2049,) and by act of 3d of April, 1804, (chap. 2507,) at the house of David Steele, in the same town.

Place of holding elections in *Lack* and *Union* districts, changed by act of 25th of February, 1801, (chap. 2188.)

Armagh township erected into a district by act of 31st of March, 1806, (chap. 2715, § 21.)

The elections for the 5th district to be held in *Waynesburg*, by act of 11th of April, 1807, (chap. 2856, § 30.)

Place of holding elections in *Greenwood* township fixed, and *Milford* township erected into a separate district, by act of 4th of April, 1809, § 22-23.

By the judiciary act of 24th of Feb'y, 1806, *Mifflin*, *Centre*, *Huntingdon* and *Bedford*, compose the fourth judiciary district.

The courts in *Mifflin* county are held on the third Mondays in January, April, August and November. The term continues one week.

This county is attached to the Middle district of the Supreme Court.

CHAPTER MCCCCXXVI.

An ACT to divide the county of Berks into election districts.

SECT. 1. WHEREAS, the freemen of the county of *Berks* have by their petitions to this House, prayed, that the said county may be divided into election districts, and it is conceived that the same would contribute to their ease in attending their General Elections:

SECT. II. *Be it further enacted, and it is hereby enacted by the* 1789.
Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same,
 That from and after the passing of this act, the county of Berks shall be, and the same is hereby divided into five election districts; for the purpose of holding the General elections, of which the borough of Reading, and the townships of Alsace, Cumru, Exeter, Heidleberg, Brecknock, Maiden-creek, Carnarvon, Oley, Robinson, Ruscomb manor and the lower part of Bern, (the township of Bern to be divided as follows, beginning at a black oak tree, standing on the eastern bank of Tulpehoccon creek, in said township, being a corner of Anthony Shomo and Abraham Stout's land, thence by a straight line to John Noecker's mill, on the river Schuylkill,) shall be the first, and the freemen thereof shall hold their elections at the court-house in the said borough of Reading; and the townships of Maxatawny, Long-Swamp, Hereford district, Richmond, Rockland and Greenwich, shall be the second, and the freemen thereof shall hold their elections at the house now occupied by Philip Gehr, in Kutz-town, in the township of Maxatawny; and the townships of Windsor, Brunswick, Albany, and the upper part of Bern, shall be the third, and the freemen thereof shall hold their elections at the house now occupied by John Moyer, in the town of Hamburg, in the township of Windsor; and the townships of Tulpehoccon, Bethel, and Pine Grove, shall be the fourth, and the freemen thereof shall hold their elections at the house now occupied by Godfrey Roehrer, in the township of Tulpehoccon; and the townships of Earl, Amity, Union, Colebrookdale, and Douglass, shall be the fifth, and the freemen thereof shall hold their elections at the house now occupied by William Witman, in the township of Amity; any thing to the contrary hereof in any former law contained notwithstanding.

Berks divided into five election districts.

First district.

Second district.

Third district.

Fourth district.

Fifth district.

Passed 21st September, 1789.—Recorded in Law Book No. III. page 539.

CHAPTER MCCCCXXIV.

An ACT for erecting the town of Easton, in the county of Northampton, into a borough, and for other purposes therein mentioned. [Printed at large, 3d vol. 8vo. pa. 368, vol. 2d, folio, pa. 723.]

[THE Borough of Easton erected by certain metes and bounds. § 3. The first borough officers appointed until others should be duly elected. § 4. The burgesses, &c. to be a corporate body, by the name of "The Burgesses and inhabitants of the Borough of Easton, in the county of Northampton," with the usual corporate powers. § 5. The borough officers to be elected annually on the 1st of May, by the freeholders, and housekeepers, having resided there one year next preceding any election, &c. § 6. They have power to remove all nuisances, and encroachments on the streets, lanes, alleys, &c. within the borough. § 7. The borough officers to take a certain prescribed oath or affirmation. § 8. Markets and fairs, how to be kept, and when, in the borough: Clerk of the market, how to

1789. be appointed, and removeable. § 9. Prescribes the penalty for neglect or refusal to discharge the duties of borough officers, and the manner of filling vacancies. § 10. Ordinances and rules, how to be made, and enforced, meetings for that purpose, how to be assembled. § 11. This act to be construed most favourably for the corporation.]

Passed 23d September, 1789.—Recorded in Law Book No. III. page 540.

CHAPTER MCCCCXXVIII.

An ACT to grant to the corporation of the minister, trustees, elders and deacons of the German Reformed congregation in the city of Philadelphia, in the state of Pennsylvania, certain lands therein mentioned, for endowing a free school, for the use of the poor of the said congregation.

Passed 23d September, 1789.—Private Act.—Recorded in Law Book No. III. page 543.

CHAPTER MCCCCXXIX.

An ACT to remedy the defects of an act, entitled “A Supplement to an act, entitled “An Act more effectually to prevent unfair practices in the packing of beef and pork for exportation, and to regulate the exportation, of flax-seed, butter and biscuit, in kegs.”

[Original act, ante, pa. 475, chap. 1384 and see vol. 1, pa. 170, chap. 295.]

SECT. I. WHEREAS by the act, entitled “A Supplement to an act, entitled “An act more effectually to prevent unfair practices in the packing of beef and pork for exportation, and to regulate the exportation of flaxseed, butter and biscuit, in kegs,” it is enacted that salted beef and pork, which shall have been brought or imported from any place or places without the bounds and limits of this commonwealth, and which shall have been branded in the manner therein described, shall be excepted from the regulations of the said act: And whereas the said exception, from its extent, may be injurious to the reputation of the salted provisions of this state:

SECT. II. *Be it therefore enacted, and it is hereby enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same,* That the exception contained in the act aforesaid shall not be deemed to extend to any salted beef or pork, unless the same shall be brought into this commonwealth by water, from some place without and beyond the Capes of Delaware.

Explanation of the former act, respecting the inspection of beef and pork.

SECT. III. And in order that such beef and pork as shall be exported from this commonwealth may be the better known in foreign parts, and estimated according to the qualities thereof: *Be it further enacted by the authority aforesaid,* That all such tierces, barrels and half barrels, as are in and by the said recited act directed and required to be branded with the arms of Pennsylvania, shall, instead thereof be branded with the word “Philadelphia,” at full length, and in a plain and legible manner.

Alteration of the brand mark.

Passed 24th September, 1789.—Recorded in Law Book No. III. page 545.

CHAPTER MCCCCXXX.

1789.

An ACT to repeal certain parts of an act, entitled "An Act for incorporating the Presbyterian congregation of New-London, in the county of Chester."

[Original
act, ante. pa.
409, chap.
1273.]

Passed 24th September, 1789.—Private Act.—Recorded in Law Book No. III.
page 545.

CHAPTER MCCCCXXXII.

An ACT for dividing the county of Chester, and to erect part thereof into a separate county.

SECT. I. WHEREAS the inhabitants of the borough of Chester and the south-eastern parts of the county of Chester, have by their petitions, set forth to the General Assembly of this state, that they labour under many and great inconveniences, from the seat of justice being removed to a great distance from them, and have prayed that they may be relieved from the said inconveniences by erecting the said borough and south-eastern parts of the said county into a separate county: And as it appears but just and reasonable that they should be relieved in the premises,

SECT. II. *Be it enacted, and it is hereby enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same, That all* that part of Chester county, lying within the bounds and limits hereinafter described, shall be, and the same is hereby, erected into a separate county, that is to say: Beginning in the middle of Brandywine river, where the same crosses the circular line of Newcastle county, thence up the middle of the said river to the line dividing the lands of Elizabeth Chads and Caleb Brinton, at or near the ford, commonly called or known by the name of Chad's ford, and from thence, on a line as nearly straight as may be, so as not to split or divide plantations, to the great road leading from Goshen to Chester, where the Westown line intersects or crosses the said road, and from thence along the lines of Edgemont, Newtown and Radnor, so as to include those townships, to the line of Montgomery county, and along the same and Philadelphia county line to the river Delaware, and down the same to the circular line aforesaid, and along the same to the place of beginning, to be henceforth known and called by the name of "Delaware County."

The county
of Delaware
erected.

Its bound-
aries.

SECT. III. *And be it further enacted by the authority aforesaid, That all that part of the township of Birmingham, which, by the line of division aforesaid, shall fall within the county of Chester, shall be one township, and retain the name of Birmingham; and all that part of the said township, which, by the division line aforesaid, shall fall within the county of Delaware, shall be one township, and shall retain the name of Birmingham; and that all such part of the township of Thornbury, which, by the division line aforesaid, shall fall within the county of Chester, shall be one township, and shall retain the name of Thornbury; and that all such part of the same*

Townships
divided by
running the
line, how to
be called.

1789. township, which, by the line of division aforesaid, shall fall within the county of Delaware, shall be one township, and shall retain the name of Thornbury; until the same shall be altered by the courts of General Quarter Sessions of the peace for the said counties respectively.

Rights and privileges of the new county.

SECT. IV. *And be it further enacted by the authority aforesaid,* That the inhabitants of the said county of Delaware shall, at all times hereafter, enjoy all and singular the jurisdictions, powers, rights, liberties, and privileges, whatsoever, which the inhabitants of any other county of this state do, may, or ought to enjoy, by the constitution and laws of this state.

Of the election in the new county.

SECT. V. *And be it further enacted by the authority aforesaid,* That the elections for the said county of Delaware shall be held at the old court-house, in the borough of Chester, where the freemen of the said county shall elect, at the times and under the regulations directed by the constitution and laws of this state, [a Councillor,] Representatives to serve them in General Assembly, [Censors,] Sheriffs, Coroners, and Commissioners, which said officers, when duly elected and qualified, shall have and enjoy all and singular such powers authorities and privileges, with respect to their county, as such officers elected in and for any other county may, can, or ought to have, and the said elections shall be conducted in the same manner and form, and agreeably to the same rules and regulations, as now are or hereafter may be in force in the other counties of this state.

[Obsolete.]

[*Provided always,* That nothing herein contained shall authorize or empower the electors of the county of Delaware to elect or choose a Councillor for the same county, until the term for which the present Councillor for Chester county was elected shall by law expire, or until his death, resignation, or removal from office.]

Apportionment of representation between Chester and Delaware counties.

SECT. VI. *And be it further enacted by the authority aforesaid,* That the freemen of the said county of Delaware shall, at all future general elections, elect two Members, and the freemen of the county of Chester, at all future general elections, shall elect four Members, to represent them, respectively, in the General Assembly of this commonwealth, until the same shall be altered agreeable to the constitution and laws of this state.

Jurisdiction of the Supreme Court, &c. extended to the new county.

SECT. VII. *And be it further enacted by the authority aforesaid,* That the Justices of the Supreme Court and of the courts of Oyer and Terminer and General Gaol Delivery of this state shall have like powers, jurisdictions and authorities, in the said county of Delaware, as in the other counties or this state, and they are hereby authorized and empowered to deliver the gaols of the said county of Delaware of capital and other offenders, in like manner as they are authorized to do in other counties of this state.

Of the courts of Common Pleas and Quarter Sessions.

SECT. VIII. *And be it further enacted by the authority aforesaid,* That the Justices of the courts of Quarter Sessions and Common Pleas, now commissioned within the limits of the county of Delaware, and those that may hereafter be commissioned, or any three of them, shall and may hold Courts of General Quarter Sessions of the Peace and Gaol Delivery, and county courts of Common Pleas, for the said county of Delaware, and shall have all and singular such powers, rights, jurisdictions and authorities, to all intents and pur-

poses, as other Justices of the courts of General Quarter Sessions, and Justices of the county courts of Common Pleas, in the other counties of this state, may, can, or ought to have in their respective counties; which said courts of Common Pleas shall open, commence and be held for the said county of Delaware, at the court-house in the said borough of Chester, [on the second Tuesday in the months of November, February, May and August,] in each year, for the despatch of public business; and the said courts of General Quarter Sessions of the peace shall open, commence and be held at the same place, and for the same county, on the Mondays next preceding the second Tuesday in each of the said months yearly.

SECT. IX. And whereas it is represented to this Assembly by the petitioners, that they have contracted and agreed with the present owner of the old court-house, prison, and workhouse, in the said borough of Chester, for the purchase thereof, at a price far beneath what such buildings could be erected for, which they are willing and desirous should be conveyed for the use of the county, on re-payment of the sum agreed upon: *Be it therefore enacted by the authority aforesaid,* That it shall and may be lawful to and for Henry Hale Graham, Richard Reilly, Josiah Lewis, Edward Jones and Benjamin Brannan, or any three of them, to take conveyances and assurances to them, and their heirs, of the said old court-house, and of the prison and work-house, in the said borough of Chester, with the lots of ground thereunto belonging, in trust and for the use of the inhabitants of the said county of Delaware, to accommodate the public service of the said county.

Trustees
for county
buildings.

SECT. XII. *And be it further enacted by the authority aforesaid,* That the Sheriff, Coroner and public officers of the county of Chester, other than the Justices of the peace, Oyer and Terminer, Gaol Delivery, and of the court of Common Pleas, shall continue to exercise the duties of their respective offices within the county of Delaware, until similar officers shall be appointed, agreeably to law, within the said county of Delaware; and that all arrearages of excise and public taxes shall be paid into the hands of the present collectors, to be by them accounted for, in manner and form, as if this act had never been passed: *Provided nevertheless,* That the commissioners of Chester county shall ascertain all the just debts due by the said county before the passing of this act, and deliver a true and certified account thereof to the before mentioned Trustees of Delaware county, within three months after the passing of this act; and if the taxes assessed and laid in Chester county, before the passing of this act, for county uses, shall be more than sufficient to pay all the just debts due of the said county, when the said taxes shall be collected and paid to the Treasurer of Chester county, he, the said Treasurer shall pay unto the said Trustees of Delaware county their full proportion or part of such overplus money, agreeably to the taxes the said two counties have respectively paid, the same to be ascertained by the commissioners of Chester county, and also that the said county of Delaware shall be liable and accountable for its due and proper proportion of all public taxes due from the said county of Chester, before the division thereof, in like manner as if this act had not been made.

of the county
officers.

and debts due
before the di-
vision of the
county of
Chester.

1789.

Surety to be
given by the
officers of
the new
county.

SECT. XIII. *And be it further enacted by the authority aforesaid,* That the Sheriffs, Coroners, Treasurers and Collectors of excise, hereafter to be appointed or elected in the said county of Delaware, before they, or any of them, shall enter upon the execution of their respective offices, shall give security for the faithful execution of their respective offices, that is to say; the Sheriff in the sum of one thousand five hundred pounds; the Coroner seven hundred and fifty pounds; the Treasurer in the sum of one thousand five hundred pounds; and the Collector of excise in the sum of two hundred pounds.

Passed 26th September, 1789.—Recorded in Law Book No. III. page 551. (y)

(y) The 10th, 11th, and 14th sections of this act, are obsolete, they related to the manner of defraying the expenses of the county buildings; continuing the process previously instituted in Chester county, and appointing commissioners to run the boundary lines.

The second, third and fourth election districts in this county, were established by act of 22d of April, 1794, (chap. 1756.)

By the last enumeration, the county of Delaware contains two thousand five hundred and fifty-four taxables; and with the county of Chester, ten thousand and fifty taxables: and, by the act of 21st of March, 1808, apportioning the representation in pursuance thereof, sends two members to the House of

Representatives, and in conjunction with the county of Chester, two members to the senate.

By the Judiciary act of 24th of February, 1806, Delaware, Chester, Bucks and Montgomery, compose the seventh judiciary district, and the term was to be two weeks, but by an act passed 10th of March, 1810, the term in Delaware is to continue but one week. April term to commence on the second Monday in April, and July term on the 4th Monday in July; and by the original act, the January and October terms commence on the 3d Mondays of those months.

Delaware county is attached to the Eastern District of the Supreme Court.

CHAPTER MCCCCXXXIII.

An ACT to enable the owners and possessors of a certain tract of meadow land, situate in the precinct of Richmond, in the township of the Northern-Liberties, to keep the bank, dams, sluices and flood-gates, in repair.

Passed 24th September, 1789.—Private Act.—Recorded in Law Book No. III. page 546.

CHAPTER MCCCCXXXIV.

A SUPPLEMENT to the several laws of this commonwealth respecting attachments.

SECT. I. WHEREAS the laws of this commonwealth respecting attachments, have been found defective, inasmuch as no adequate provision is therein made for obtaining and compelling a disclosure of the goods, chattels, monies, effects and credits of the defendant and defendants, in the custody, possession and charge, or due and owing from any garnishee or garnishees, upon whom such writs of attachment are respectively served, so that many hon-

[See vol. I, page 45, chap. 142, and the notes thereto sub-joined.]

est creditors have been unable to recover their just debts, and the wholesome regulations of the said laws have often been defeated : 1789.
 For remedy whereof,

SECT. II. *Be it enacted, and it is hereby enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same,* That Plaintiff in foreign attachment may file interrogatories to examine the garnishee. it shall and may be lawful to and for any and every plaintiff and plaintiffs, in any and every writ and writs of attachment already issued, or to be issued, by and out of any court or courts, within this commonwealth, after judgment hath been duly obtained against the defendant and defendants, therein respectively named, to prepare and exhibit, in writing, all and singular such interrogatories, upon which the said plaintiff and plaintiffs is, are or shall be desirous to obtain and compel the answer and answers of any and every garnishee and garnishees, in whose hands the said writ or writs of attachment hath or have been, or shall, or may be respectively laid and served, touching the goods, chattels, monies, effects and credits of the said defendant and defendants, in his or their possession, custody and charge, or from him or them respectively due and owing, at the time of the service of such writ or writs of attachment, or at any other time. And the said interrogatories, so prepared and exhibited, the said plaintiff or plaintiffs shall file, or caused to be filed, in the proper court, by or out of which the said writ or writs of attachment, respectively, hath or have issued, or shall or may issue.

SECT. III. *And be it enacted by the authority aforesaid,* That Garnishee shall make answer. each and every such garnishee and garnishees, respectively, to whom a copy of such interrogatories shall be delivered, is and are hereby required and enjoined to be and appear before the Justices of the same court, on a day and time by them for that purpose to be named, and then and there, in writing, exhibit and file, under his or their oath or oaths, affirmation or affirmations (which the Prothonotary of the proper court is hereby authorized and required to administer) full, direct and true answers to all and singular the interrogatories by the said plaintiff and plaintiffs respectively prepared, exhibited and filed, in the manner herein before directed and described. And if any garnishee or garnishees shall neglect or refuse so to Proceed, on neglect or refusal. do, then, and in every such case, it shall and may be lawful to and for the Justices of the proper court, and they are hereby required to adjudge, that such garnishee or garnishees, so neglecting or refusing as aforesaid, hath or have in his or their possession, custody and charge, goods, chattels, monies and effects, of the said defendant or defendants, in such writ or writs of attachment, respectively named, or is and are indebted unto such defendant or defendants, to an amount and value sufficient to pay and satisfy the debt, claim or demand of the said plaintiff or plaintiffs, together with all legal costs and charges of suit. And the said Justices of the proper court shall thereupon award and issue a writ or writs of execution against the person or persons, or against the goods and chattels, lands and tenements, of such garnishee or garnishees, so refusing or neglecting as aforesaid; and therein shall proceed in like manner, as if such writ or writs of execution had been awarded and issued by reason of any judgment, in such court regularly

1789. pronounced and entered, in pursuance of the verdict of a jury, or by virtue of the confession of the party.

In what case
a *capias* may
issue against
a garnishee.

SECT. IV. And whereas it frequently happens that garnishees in writs of attachment have in their hands and possession goods and chattels belonging to the defendant, which cannot be found by the officer serving such writs, to be taken and secured by him, and others are indebted in large sums of money, which they refuse to pay, or in anywise to secure: For remedy whereof, *Be it further enacted by the authority aforesaid, That if any plaintiff in any writ of attachment to be issued within this commonwealth, or any person for him, shall, upon oath or solemn affirmation, declare that he or she verily believes that any person or persons, upon whom any writ of attachment shall be directed to be served as garnishee, hath or have any goods, chattels or effects, belonging to the defendant or defendants, in his, her or their hands or possession, or under his, her or their care, or is or are indebted to the defendant or defendants in any sum of money, although the same shall not then be due; and shall also, in manner aforesaid, declare that the person or persons, upon whom such writ of attachment shall be directed to be served as garnishee, is or are not an inhabitant or inhabitants of the county within which the same shall issue, or that he or she verily believes that there is just cause to fear that such person or persons is or are about to depart and remove from the same, it shall and may be lawful for the plaintiff to cause to be inserted in the body of the writ of attachment, a clause of *capias* against all such person and persons as aforesaid, upon whom the same shall be directed to be served as garnishee, and he, she or they, shall thereupon be held to sufficient sureties to appear at court, and to make answers as by this act is required; and further, render his, her or their bodies to the prison of the proper county, or to pay the condemnation money, if judgment shall pass against him, her or them.*

Passed 28th September, 1789.—Recorded in Law Book No. III. page 557.

CHAPTER MCCCCXI.

An ACT for the inspection of Shingles.

SECT. I. WHEREAS the inspection laws of this state have been found beneficial to commerce, and productive of fair dealing between individuals, but the same are not sufficiently extensive: Therefore,

SECT. II. *Be it enacted, and it is hereby enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same, That no shingles shall be exported from this state, unless the same shall be of one of the kinds hereinafter mentioned and described, viz.*

Dimensions
of shingles
for exportation.

Shingles of the first kind, shall be two feet nine inches at least in length, five and an half inches at least in width, and of such thickness, that, when dressed, they may remain at least half an inch thick at every place between the butt end and a distance of ten inches from the same.

1789.

Shingles of the second kind shall be twenty-four inches at least, and not more than twenty-six inches in length, five inches at least in width, and of such thickness, that when dressed, they may remain at least half an inch thick at every part between the butt end and a distance of seven inches therefrom.

Shingles of the third kind shall be at least eighteen inches, and not more than twenty inches long, nor less than four inches wide, and of thickness sufficient to remain, when dressed, three eighth parts of an inch thick at every place between the butt end and a distance of six inches from the same.

And every of the said kinds of shingles shall be made of sound wood, free from splits, and in other respects of merchantable quality; and every exporter of shingles shall, previously to lading the same on board any vessels, submit them to the inspection of an officer for such purpose legally appointed.

SECT. III. *And be it further enacted by the authority aforesaid,* That the officer who now is, or hereafter may be, appointed to inspect staves and heading, shall be the officer for inspecting shingles, in conformity to the directions of this act, and shall be authorized to appoint deputies; and the said officer and his deputies shall respectively have all the powers and authorities, respecting the culling and inspecting shingles, which the officer, or his deputies, for the culling and inspecting staves and heading now by law have, with respect to staves and heading: And if the determination of any such officer shall be disputed, a like review shall be allowed, and on the like terms, as by the laws in force are directed with respect to staves and heading; and like penalties shall be adjudged, inflicted and recovered, for offences against this act, as would legally be adjudged, inflicted and recovered, for similar offences against the laws for the inspection of staves and heading; and all fines shall be applied and appropriated in like manner.

Inspector of staves and heading to inspect shingles. [See post. chap. 1869. 17th of March, 1796.]

Proceeding, if his decision is disputed.

SECT. IV. *And be it further enacted by the authority aforesaid,* That the said officer, or his deputies, when thereunto required, shall inspect, count and cull, conformably to the directions of this act, all shingles intended to be exported, and shall keep a like record thereof, as is required by law with respect to staves and heading, to which recourse may in like manner be had for similar fees and allowances; and the following fees shall be allowed for inspecting, culling and counting of shingles, viz. for the first and second kinds, eighteen pence per thousand; for the third kind, one shilling per thousand; which fees shall be paid by the exporter or purchaser, provided the shingles shall be adjudged merchantable, and by the seller, provided the same shall be deemed unmerchantable; and whenever shingles are offered for inspection in bundles, which require to be opened by the officer, the expense of putting up the same again (if so wanted) shall be borne by the seller.

Duty of the Inspector;

his fees;

and qualification.

SECT. V. *And be it further enacted by the authority aforesaid,* That before the said officer, or any deputy, shall proceed to the execution of this act, he shall take an oath or affirmation, "faithfully and impartially to perform his duty or trust according to the directions of this act, to the best of his judgment;" which oath shall be

1789. administered to him, and a record thereof kept, as is by law directed respecting the inspectors of staves and heading, the expense whereof shall be paid by such officer.

Period when
this act com-
mences.

SECT. VI. *And be it further enacted by the authority aforesaid,* That this act shall take effect, and be in force, from and immediately after the first day of March next.

Passed 29th September, 1789.—Recorded in Law Book No. IV. page 11. (z)

(z) By an act passed 5th of April, 1790, chap. 1503, the operation of this act was suspended until the 1st of January, following: And by the third section of the same act, it was enacted, That shingles of the third kind, mentioned in the act in the text, when sold in bundles, shall be packed in a close and compact manner, in the same bun-

dles, each of which shall contain one hundred and twenty-five shingles, and no more, and each row in every of the said bundles shall contain three shingles, and no more, and shall measure fifteen inches, and that no such shingles shall measure less than three inches and an half in breadth.

CHAPTER MCCCCXLII.

An ACT to cede to and vest in the United States, the light-house at Cape Henlopen, and all the beacons, buoys, and public piers, together with the lands and tenements thereunto belonging, and together with the jurisdiction of the same.

SECT. I. WHEREAS, by an act of the Senate and House of Representatives of the United States, in Congress assembled, approved the seventh day of August, in the year of our Lord one thousand seven hundred and eighty-nine, by the President of the United States, entitled “An act for the establishment and support of light-houses, beacons, buoys, and public piers,” provision is made, “That all expenses which shall accrue, from and after the fifteenth day of August, one thousand seven hundred and eighty-nine, in the necessary support, maintenance, and repairs of all light-houses, beacons, buoys, and public piers, erected, placed, or sunk, before the passing of the said act, at the entrance of, or in any bay, inlet, harbour, or port of the United States, for rendering the navigation thereof easy and safe, shall be defrayed out of the treasury of the United States;” under this proviso, nevertheless, “That none of the said expenses shall continue to be so defrayed by the United States, after the expiration of one year from the day aforesaid, unless such light-houses, beacons, buoys, and public piers, shall, in the mean time, be ceded to and vested in the United States, by the state or states, respectively, in which the same may be, together with the lands and tenements thereunto belonging, and together with the jurisdiction of the same:” And whereas, by the constitution of the United States, the Congress thereof are vested with the power of regulating the commerce of the Union, and it is necessary that the jurisdiction, property, and control of the light-houses, beacons, buoys, and public piers, should be ceded and vested in them, for the purpose of carrying such power into complete effect:

SECT. II. *Be it therefore enacted, and it is hereby enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same,*

That all the right, title, property and interest of this commonwealth, in and to the light-house at Cape Henlopen, and all the beacons, buoys, and public piers, now erected, placed, or sunk in the bay and river Delaware, for the improvement and safety of the navigation thereof, and for rendering the same more easy and convenient, together with all the lands and tenements thereunto belonging, shall be, and hereby are, ceded to and vested in the United States of America, as fully, absolutely, and to the same extent, as this commonwealth now holds and is entitled in and to the same, together with the jurisdiction thereof, so far as this commonwealth hath or had right to exercise jurisdiction over the whole, or any part of the same. *Provided nevertheless*, That nothing in this act contained shall be construed, deemed, or taken to extend to or include Mud-Island, in the river Delaware, or any part thereof, or the wharves, or any of them, which are built out and extended therefrom.

1789.
The Light-house at Cape Henlopen, beacons, &c. ceded to the United States.

But Mud-Island and its wharves excepted.

Passed 29th of September, 1789.—Recorded in Law Book No. IV. page 20. (a)

(a) For regulations respecting Mud-Island, see the act of the 2d of April, 1790. (Note to former edition.)

CHAPTER MCCCCXLIV.

An ACT for regulating certain election districts in the counties of Westmoreland and Allegheny.

SECT. I. WHEREAS the boundary lines of the county of Allegheny which have been lately run and marked, so far as they have extended through the county of Westmoreland, have divided several of the election districts in such manner, that the places appointed for holding the elections in said districts are included within the boundaries of the said county of Allegheny, and those parts of the said districts, which remain within the county of Westmoreland, are left without any known place, where the people can legally vote at their general elections. For remedy whereof,

SECT. II. *Be it enacted, and it is hereby enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same*, That all that part of the county of Allegheny, comprehended within the forks of the rivers Monongahela and Youghiogony, and the boundary line of the said county, is hereby erected into a separate election district; and it shall and may be lawful for the freemen of said district to meet at the house of David Robison, and there give in their votes at the general election, to be distinguished and known by the name of the second election district.

The second election district of Allegheny county.

SECT. III. And whereas the inhabitants of Plumb and Versailles townships, in the said county of Allegheny, have, by their petitions, stated the great difficulty of attending the general elections at the town of Pittsburg, and prayed to be erected into a separate district: *Therefore be it enacted by the authority aforesaid*, that the said townships of Plumb and Versailles, in the county aforesaid, are hereby erected into a separate election district, to be known by the

The third election district of Allegheny county.

1789. name of the third district; and it shall and may be lawful for the freemen of the said district to meet at the house now occupied by Matthew Simpson, and there give in their votes at the general election.

The fourth election district of Westmoreland county.

SECT. IV. *And be it enacted by the authority aforesaid,* That all that part of Restraver township, which remains within the county of Westmoreland, is hereby erected into a separate election district, known by the name of the fourth district; and that it shall and may be lawful for the freemen of the said district to meet at the house occupied by Samuel Wilson, and there give in their votes at the general election.

The fifth election district of Westmoreland county.

SECT. V. *And be it further enacted by the authority aforesaid,* That such parts of Huntingdon and Franklin townships, as remain within the county of Westmoreland, are hereby annexed to the fifth election district; and that it shall and may be lawful for the freemen of those townships, which so remain within the county of Westmoreland, to meet at the town of Greensburgh, and there give in their votes at the general election.

Derry township erected into an election district.

SECT. VI. And whereas the inhabitants of Derry township are subject to great difficulties in crossing waters, and attending the place of their election at so great a distance, and have expressed a desire of being erected into a separate district: *Therefore be it enacted by the authority aforesaid,* That the said township of Derry is hereby erected into a separate election district; and that it shall and may be lawful for the freemen of said township to meet at the house now occupied by Moses Donald, and there give in their votes at the general election.

Repeal of former laws.

SECT. VII. *And be it further enacted by the authority aforesaid,* That so much of an act of General Assembly, entitled "An act for dividing Westmoreland county into election districts," as directs and requires the people of the several townships, and parts of townships, herein named and described, to attend at any other place or places of election, within the said county of Westmoreland, is hereby repealed, and made null and void.

Passed 29th September, 1789.—Recorded in Law Book No. IV. page 22.

CHAPTER MCCCCXLV.

An ACT relating to several election districts in the counties of Bedford and Mifflin.

SECT. I. WHEREAS, it has been found very inconvenient for the freemen of Londonderry township, in the county of Bedford, to attend at Bedford town, for the purpose of holding their annual elections as the law directs: For remedy whereof,

The fourth election district of Bedford county.

SECT. II. *Be it enacted, and it is hereby enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same,* That the township of Londonderry, in the county of Bedford, be, and the same hereby is, severed from the first election district in said county, and erected into a new and separate district, to be

called the fourth election district in Bedford county. And that the freemen of the said township of Londonderry shall hereafter hold their general elections at the house now occupied by John Bright, in the said township of Londonderry, according to the constitution and laws in such case made and provided, and shall make return of such elections, in the same manner as the laws of this commonwealth direct the other districts in said county to make their returns, any thing in the election laws of this commonwealth contained to the contrary in any wise notwithstanding.

1789.

SECT. III. And whereas the freemen of Air and Dublin townships, in Bedford county, have, by their petition, set forth, that they labour under very great inconveniences in attending at their elections, as the place where Dublin township formerly elected is now in Huntingdon county, occasioned by the division of Bedford county; *Be it therefore further enacted by the authority aforesaid*, That the townships of Air and Dublin, in the county of Bedford, be, and the same are hereby, erected into a new and separate district, to be called the fifth election district in Bedford county; and the freemen of said two townships shall hereafter meet and hold their elections at the house now occupied by Daniel M'Connel, in Air township, in said county, and in all other matters and things conduct themselves, as is directed by the constitution and laws of this commonwealth respecting elections.

Fifth election district of Bedford county.

SECT. IV. And whereas the freemen of that part of Greenwood township, now lying in the county of Mifflin, are separated from their usual place of election by the division of Cumberland county, and it is inconvenient for the freemen of the township of Lack, in the said county of Mifflin, to attend at the house of Thomas Wilson, for the purpose of holding their annual elections: *Be it enacted by the authority aforesaid*, That that part of the township of Greenwood, lying in the county of Mifflin, be, and the same is hereby, erected into a separate district, and the freemen of the said district shall hereafter meet, on the day appointed by the constitution of this commonwealth, for holding the general election, at the house now occupied by Henry M'Connel, in said district, and then and there elect members of Assembly and other elective officers for the said county, according to the laws and constitution of this commonwealth.

Greenwood township, in Mifflin county, erected into an election district.

SECT. V. *And be it enacted by the authority aforesaid*, That the township of Lack, in the said county of Mifflin, be, and the same is hereby erected into a new and separate district, and the freemen of the said township of Lack shall hereafter meet at the house lately occupied by James Stackpole, in the said township of Lack, on the day appointed by the constitution of this commonwealth for holding the general election, and then and there elect members of the General Assembly and other elective officers for said county of Mifflin, according to the constitution and laws of this state; and the freemen of said districts of Greenwood and Lack shall severally make return of such elections, at the same time, and in the same manner, as the laws of this commonwealth direct in the like cases.

Lack township, in Mifflin county, erected into an election district.

1789.

CHAPTER MCCCCXLVI.

An ACT to establish and confirm the boundary line between this state and the state of New-York.

SECT. 1. WHEREAS the honourable John Penn Esquire, then Governor of the late province, now state of Pennsylvania, did, on the twenty-fourth day of October, in the year one thousand seven hundred and seventy-four, nominate and appoint David Rittenhouse, Esquire, on the part of Pennsylvania, to fix, in conjunction with any person to be appointed on the part of the then province of New-York, the beginning of the forty-third degree of north latitude on the Mohawk or western branch of Delaware river, which is the north-east corner of Pennsylvania, and to proceed westward in fixing and marking the boundary line between the said provinces of Pennsylvania and New-York: And whereas the honourable Cadwallader Colden, Esquire, then governor of the late province, now state, of New-York, with the advice of the then Council, did, on the eighth day of November, in the same year, nominate and appoint Samuel Holland, Esquire, on the part of New-York, to fix, in conjunction with the said David Rittenhouse, the same corner, and to proceed in running and marking the said line: And whereas, by virtue of an act of the General Assembly of the state of Pennsylvania,* the Supreme Executive Council of this commonwealth, by commission, under the hand of Charles Biddle, Esquire, and the great seal, bearing date the sixteenth day of June, one thousand seven hundred and eighty-six, did constitute and appoint Andrew Ellicot, Esquire, commissioner, on the part of the said commonwealth of Pennsylvania, to run and mark the northern boundary of this commonwealth: And whereas the said David Rittenhouse and Samuel Holland, in pursuance of their said respective appointments, did proceed on the said business, and made return thereof, under their hands, bearing date at Philadelphia the fourteenth day of December, in the same year, by which it appears that they ascertained and fixed the beginning of the forty-third degree of north latitude on the said Mohawk or western branch of Delaware, and there, in a small island of the said river, planted a stone, marked with the letters and figures **NEW-YORK, 1774.** cut on the north side thereof, and the letters and figures **Lat. 40° Var. 4° 20'** cut on the top thereof; and in a direction due west from thence, on the west side of the said branch of Delaware, collected and placed a heap of stones at the water mark, and proceeding further west, four perches, planted another stone in the said line, marked with the letters and figures **PENNSYLVANIA, 1774.** cut on the south side thereof, and the letters and figures **Lat. 42° Var. 4° 20'** cut on the top thereof; and at the distance of eighteen perches due west from the last mentioned stone marked an ash tree; but that the rigour of the season prevented them from proceeding further in running the said line, as by the said return, remaining of record, fully appears: And whereas, by virtue of an act of the General Assembly of the state of New-York, entitled "An act for running out and marking the jurisdiction line between this state and the commonwealth of Pennsylvania," passed the 26th day of February,

[* Chap.
1143.]

in the year one thousand seven hundred and eighty-six, James Clinton and Simeon Dewitt, Esquires, were duly appointed commissioners, on the part of the state of New-York, to join with such person or persons as should be appointed on the part of Pennsylvania, to run out, mark and ascertain the said line, beginning at the place so fixed and ascertained by the said commissioners, as above mentioned, on the Mohawk or western branch of Delaware river: And whereas the said Andrew Ellicot, on the part of this commonwealth, and the said James Clinton and Simeon Dewitt, on the part of the state of New-York, did, in the year of our Lord one thousand seven hundred and eighty-six and seven, in pursuance of the powers so as aforesaid vested in them, run, fix and ascertain the said boundary line, beginning at the first mentioned stone, marked as is herein above recited, and extending thence due west by a line of mile-stones, marked with the number of mile and miles which each stone is distant from the said first mentioned stone, planted in the said small island, to the bank of Lake Erie, at the distance of two hundred and fifty-nine miles and eighty-eight perches from the said first mentioned corner stone; and the said commissioners did accordingly return a draft or plot of the said line, under their hands, to the Supreme Executive Council of this commonwealth; in which said draft or plot are noted and laid down the several principal waters, mountains, and other remarkable places, through and over which the said boundary line runs; which said boundary line is and ought to be for ever hereafter deemed and taken as the true boundary of territory and jurisdiction between this state and the state of New-York, so far as the state of New-York is bounded thereby:

SECT. II. *It is therefore hereby declared and enacted, by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same, 'That* the said boundary line, so as aforesaid run, marked and returned, by the said Andrew Ellicot, commissioner on the part of this state, and the said James Clinton and Simeon Dewitt, commissioners on the part of the state of New-York, beginning at the first mentioned corner stone, planted in the said small island, in the Mohawk or west branch of Delaware river, and thence extending due west, by the marked stones aforesaid, so far westward as to meet the meridian line, which is hereafter to be fixed and established as the western boundary of the state of New-York, shall be, and for ever hereafter shall be deemed and taken to be, and is hereby declared to be, the true and just line of boundary and partition, both of territory and jurisdiction, between the state of Pennsylvania and the state of New-York; and that this commonwealth of Pennsylvania doth not, nor at any time hereafter shall or will, claim to have, hold or exercise, any right, power or jurisdiction, in or over the soil or inhabitants dwelling northward of the said line hereby established, eastward of the said meridian line, or western boundary of New-York: *Provided always nevertheless, 'That nothing in this act contained shall be deemed to bind the commonwealth of Pennsylvania, until the legislature of New-York shall establish and confirm the said boundary line on their part, as fully and effectually as the same is by this act established and confirmed.*

The boundary line between the states of Pennsylvania and New York, as marked by the commissioners confirmed.

1789.

The line to be engraved with proper notes.

[This section repealed by act of 17th of March, 1790, chap. 1489, and Reading Howell, authorized to delineate the line on his map.]

[SECT. 111. And in order that the knowledge of the said boundary line may be rendered permanent and extensive: *It is hereby further enacted by the authority aforesaid,* That it shall and may be lawful for the Supreme Executive Council of this commonwealth to cause and procure the draft or plot of the said line, and of the reports of the commissioners who completed the same, together with such notes and observations of the said commissioners, as, in the opinion of the said Council, may be necessary to be preserved, to be engraved on plates of copper, and such number of copies to be printed from such plates, as will be sufficient to perpetuate the memory of the said line, not exceeding, in the first instance, two hundred copies, and to preserve the said plates for any future use or purpose to which they may be applied by the legislature of Pennsylvania; and to issue any order or orders on the Treasurer of this state, for the payment of the expenses of engraving and printing the same, to be charged, with the contingent expenses of government, on the fund provided therefor.]

Passed 29th September, 1789.—Recorded in Law Book No. IV. page 23.

CHAPTER MCCCXLVII.

An ACT for incorporating the society formed for the relief of distressed and decayed pilots, their widows and children.

Passed 29th September, 1789.—Private Act.—Recorded in Law Book No. IV. page 7.

CHAPTER MCCCCLI.

An ACT for incorporating the German Lutheran congregation, worshipping at the church called St. Peters, in Pikeland township, in the county of Chester.

Passed 29th September, 1789.—Private Act.—Recorded in Law Book No. IV. page 24.

CHAPTER MCCCCLIII.

An ACT for incorporating the German Lutheran Congregation worshipping at the Church called Zion, in Pikeland township, in the county of Chester.

Passed 30th September, 1789.—Private Act.—Recorded in Law Book No. IV. page 28.

A C T S

OF THE

General Assembly of Pennsylvania.

Passed during two sessions of the fourteenth General Assembly of the Commonwealth,—the first commencing the 26th day of October, and ending the 9th day of December, 1789,—and the second commencing the 2d day of February, and ending the 6th day of April, 1790,—the third session, which commenced the 24th of August, was dissolved on the 3d day of September, 1790, by the adoption of the existing constitution, without having passed any law.

RICHARD PETERS, SPEAKER.

1789.

CHAPTER MCCCCLXI.

An ACT to provide for the custody of prisoners committed under the authority of the United States.

SECT. I. WHEREAS, by a resolution of the Senate and House of Representatives of the United States, in Congress assembled, it hath been recommended to the Legislatures of the several states to pass laws, making it expressly the duty of the keepers of their gaols, to receive and safe keep therein all prisoners committed under the authority of the United States, until they shall be discharged by the due course of the laws thereof, under the like penalties as in the case of prisoners committed under the authority of such states respectively, the United States to pay for the use and keeping of such gaols, at the rate of fifty cents per month for each prisoner, that shall under their authority be committed thereto, during the time such prisoners shall be therein confined: and also to support such of said prisoners as shall be committed for offences: And whereas it is just and reasonable to aid the United States herein, on the terms aforesaid, until other provision shall be made by law in the premises:

SECT. II. *Be it therefore enacted, and it is hereby enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same, That all Sheriffs, Gaolers, Prison-keepers, and their and each and every of their deputies, within this commonwealth, to whom any per-*

Persons
committed
under pro-
cess of the

1789.

United States, to be kept in custody by the state Sheriffs and Gaolers.

A callendar of such prisoners to be yearly transmitted to the Executive, to the end that payment of the expenses may be obtained from the United States.

son or persons shall be sent or committed, by virtue of legal process issued by or under the authority of the United States, shall be, and they are hereby, enjoined and required to receive such prisoners into custody, and to keep the same safely, until they shall be discharged by due course of law; and that all such Sheriffs, Gaolers, Prison-keepers, and their deputies, offending in the premises, shall be liable to the same pains and penalties, and the parties aggrieved shall be entitled to the same remedies against them, or any of them, as if such prisoners had been committed to their custody by virtue of legal process issued under the authority of this state.

SECT. III. *Be it further enacted by the authority aforesaid,* That a callendar of such prisoners shall, on the first day of January in every year, be made out by the respective Gaolers and Prison-keepers in each county, upon oath or affirmation, to be administered by the President of the court of Common Pleas of the respective county, specifying particularly the names of such prisoners, the time of their commitment and discharge, and whether upon civil or criminal process, together with the expense of subsisting such of the said prisoners as shall have been committed for offences; which callender shall be transmitted to the President and Supreme Executive Council of this state, to the end that order may be taken for the payment of the allowances and expenses on the part of the United States, in and by the said resolution assumed.

Passed 5th December, 1789.—Recorded in Law Book, No. IV. page 43

CHAPTER MCCCCLXV.

[See the act for the gradual abolition of slavery, vol. 1, page 492, chap. 870, and the notes thereto.]

An ACT to incorporate a society, by the name of "The Pennsylvania Society for promoting the abolition of Slavery, and for the relief of free Negroes unlawfully held in bondage, and for improving the condition of the African race."

Passed 8th December, 1789.—Private Act.—Recorded in Law Book No. IV. page 46.

CHAPTER MCCCCLXVI.

An ACT for incorporating the Methodist Episcopal church (known by the name of Saint George's church) in the city of Philadelphia, in the commonwealth of Pennsylvania.

Passed 8th December, 1789.—Private Act.—Recorded in Law Book No. IV. page 51.

CHAPTER MCCCCLXX.

An ACT for founding and endowing a public school in the town and county of Huntingdon.

Passed 19th February, 1790.—Private Act.—Recorded in Law Book No. IV. page 71.

CHAPTER MCCCCLXXIII.

1790.

An ACT to divide the county of Fayette into election districts.

SECT. I. WHEREAS, by the eighteenth section of the constitution, it is provided, that each county, at its own choice, may be divided into districts, hold elections therein, and elect their Representatives in the county, and their other elective officers; and as a division of the county of Fayette would contribute to the ease and convenience of the good citizens thereof, in holding their annual elections:

SECT. II. *Be it enacted, and it is hereby enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same, That* from and after the enacting hereof, the elections of the county of Fayette, which is hereby divided into four districts, shall be held in four places, to wit; the freemen of the townships of Union, Franklin and Wharton, the first district, shall hold their elections at the court-house in Union-town; the freemen of the townships of Springhill, German and George's, the second district, shall hold their elections at the house now occupied by Nicholas Riffle, in German township aforesaid; the freemen of the townships of Luzerne, Manallen and Washington, the third district, shall hold their elections at Fort Burd; and the freemen of the townships of Tyrone and Bullskin, the fourth district, shall hold their elections at the house now occupied by Samuel Hicks, in Bullskin township aforesaid; any thing in the act, entitled "An Act to regulate the general elections of this commonwealth, and to prevent frauds therein," contained to the contrary, in anywise notwithstanding.

Fayette divided into election districts.

First district.
Second district.

Third district.

Fourth district.

Passed 3d March, 1790.—Recorded in Law Book, No. III. page 62.

CHAPTER MCCCCLXXX.

An ACT to alter the place of holding elections in the second district of Washington county.

SECT. I. WHEREAS the people of the second district of Washington county, have, by their petition, set forth, that the line which divides the counties of Washington and Allegheny, has passed through said district in such direction, as to render the place of holding their public elections not central for the people of said district to meet at, and it being necessary to fix the place of election, so as to suit the convenience of the people: Therefore,

SECT. II. *Be it enacted, and it is hereby enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same, That* the freemen of the second district of Washington county, (known by the name of Bently's district) shall, from and after the passing of this act, meet and hold their elections at the house of Thomas Hill, on the road leading from the town of Washington to Brown's

Place of holding the election in the second district of Washington county

1790. Ville, any thing in the law which divides the county of Washington into election districts, to the contrary notwithstanding.

Passed 8th March, 1790.—Recorded in Law Book, No. IV. page 69.

CHAPTER MCCCCLXXXI.

An ACT declaring the assent of this state to certain amendments to the constitution of the United States. (b)

SECT. I. WHEREAS, in pursuance of the fifth article of the constitution of the United States, certain articles of amendment to the said constitution have been proposed by the Congress of the United States, for the consideration of the Legislatures of the several states. And whereas this House, being the Legislature of the state of Pennsylvania, having maturely deliberated thereupon, have resolved to adopt and ratify the articles hereafter enumerated, as part of the constitution of the United States.

SECT. II. *Be it therefore enacted, and it is hereby enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same, That the following amendments to the constitution of the United States, proposed by the Congress thereof, viz.*

Ratification
of certain
amend-
ments.
The third;

“Article 3. Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

fourth; “Article 4. A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.

fifth; “Article 5. No soldier shall in time of peace be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

sixth; “Article 6. The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue, but upon probable cause supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

seventh; “Article 7. No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject, for the same offence, to be twice put in jeopardy of life or limb; nor shall be compelled, in any criminal case, to be a witness against himself, nor be deprived of life, liberty or property, without due process of law; nor

(b) By an act of the 21st of September, 1791, the first amendment proposed by Congress is also ratified, vol. 3, chap. 1370. See, also, an act passed 6th February, 1811, adopting an amendment respecting titles of nobility, pensions, &c.

shall private property be taken for public use, without just compensation. 1790.

Article 8. In all criminal prosecutions, the accused shall enjoy eighth; the right of a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law; and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favour; and to have the assistance of counsel for his defence.

Article 9. In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved; and no fact, tried by a jury, shall be otherwise re-examined in any court of the United States, than according to the rules of the common law. ninth,

Article 10. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted. tenth,

Article 11. The enumeration in the constitution of certain rights shall not be construed to deny or disparage others retained by the people. eleventh;

Article 12. The powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people. and twelfth;

Be, and they are hereby, ratified on behalf of this state, to become, when ratified by the Legislatures of three fourths of the several states, part of the constitution of the United States. proposed by Congress.

Passed 10th March, 1790.—Recorded in Law Book, No. IV. page 70.

CHAPTER MCCCCLXXXII.

An ACT to provide for the more effectual relief of the widows and children of the officers and privates of the militia who have lost their lives in the service of their country.

SECT. 1. THE benevolent provisions heretofore made by the Legislature of this state for the widows and children of the officers, non-commissioned officers and private men of the militia, who have been killed or died of their wounds in the service of this state or of the United States, having, from several causes, proved ineffectual:

SECT. II. *Be it enacted, and it is hereby enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same, That the widows of such officers, non-commissioned officers, and private men of the militia, who, at the time of their being called into service, resided within this state, and who have been killed or have died of their wounds, received in the service of this State or of the United States, shall, during their widowhood, be respectively entitled to receive pensions, not exceeding the half pay and value of the rations that, such officer or private was entitled to at the time of his death; and that in case any such widow hath since departed this*

Pensions to be allowed to the widows of officers, non-commissioned officers and privates, who died in the service.

1790.

In case the widow is dead, or married again, the pension to be allowed to the children till they are 14. Guardian to be appointed.

Mode of applying to obtain the benefit of this act; and proofs to be made.

Certificates to be granted,

and transmitted to the Comptroller, who may direct a revision.

Certificates to be examined, and registered and transmitted to the Executive, who shall draw orders.

life, or hath married again, or such officer or private left no widow, the child or children of such officer or private shall be entitled to the like pension, or such proportionable part thereof, as upon the circumstances of the case, and conformably to the true intent and meaning of this act, the Justices of the court hereinafter mentioned shall adjudge reasonable and just, until such child or children, respectively, shall attain the age of fourteen years; and the said court shall appoint one or more suitable persons to be guardians of such child or children, for the purpose of receiving and applying the said pensions, or proportionable parts of pensions.

SECT. III. *And be it further enacted by the authority aforesaid,* That every person claiming the benefit of this act shall make application to the Orphans' court of the county, wherein he or she may reside; and it shall be lawful for such court, upon due proof to them made that such applicant is the widow or lawfully begotten child of such officer or private; if a widow, that she remains unmarried; if a child, that he or she is under the age of fourteen years; that such officer or private was at the time of being called into service, resident within this state, and was killed or died of his wounds, received in the actual service of this state or of the United States; to grant a certificate, setting forth the name, age, rank, and regiment or other corps, in which such officer or private served at the time of his death, the time, place and manner of his death, and the pension to which they have adjudged such applicant entitled according to this act; which certificate shall be transmitted to the Comptroller-General of this state, who shall examine the same, and, if need shall be, return it to the said court to be revised and corrected in manner hereinafter mentioned.

SECT. IV. *And be it further enacted by the authority aforesaid,* That the Comptroller-General shall cause all such certificates, as shall be by him examined and approved, to be registered in alphabetical order, and, having first submitted the same to the examination of the Register-General, shall transmit such certificates to the Supreme Executive Council, who are hereby authorized to draw orders upon the state treasurer for payment thereof.

SECT. V. And as it is expedient from time to time to revise the orders, adjudications and decrees, which have heretofore been made by virtue of the act of Assembly, entitled "An act for the more effectual supply and honourable reward of the Pennsylvania troops, in the service of the United States of America," passed the first day of March, one thousand seven hundred and eighty; the act, entitled "A supplement to the act, entitled "An act for the more effectual supply and honourable reward of the Pennsylvania troops, in the service of the United States of America," and the act, entitled "An act to settle and adjust the accounts of the troops of this state, in the service of the United States, and for other purposes thereinafter mentioned," passed the first day of October, one thousand seven hundred and eighty-one, or which may be made by virtue of this act: *Be it enacted by the authority aforesaid,* That the Justices of the Orphans' Court, in their respective counties, shall have power, as often as they respectively shall think proper, and are hereby required, at least once in every year, to revise the re-

Orphans court to revise their orders for pensions.

spective orders, proceedings and adjudications, which by virtue of the before mentioned acts have been made, or by virtue of this act shall be made, in their respective counties, and to cause any such pensioner or pensioners, or the guardians of any such pensioner or pensioners, to appear before them, with such evidence as may be necessary; and may and shall thereupon make new orders, adjudications and certificates, as the nature of the case and the true construction of the before mentioned act, or of this act, may require; and if any alteration or further order may be made, it shall be certified in manner aforesaid, for the purposes aforesaid.

[SECT. VI. *And be it further enacted by the authority aforesaid,* That so much of the act of Assembly, entitled "An act for the regulation of the militia of the commonwealth of Pennsylvania," passed the twentieth day of March, one thousand seven hundred and eighty, as authorizes and directs the Justices of the Orphans' Court in the several counties to draw orders on the county Lieutenants in the cases therein mentioned, shall be, and is hereby, repealed.]

1790.
 Repeal of so much of a former act, as directs the orphans' court to draw for pensions. [The militia law here referred to, is itself repealed.]

Passed 27th of March, 1790.—Recorded in Law Book No. IV. page 79. (c)

(c) Respecting pensions, see the act passed 18th of September, 1777, (chap. 752,)—1st of March, 1780, (vol. 1, pa. 487, chap. 869,)—10th of April, 1781, (chap. 930,)—1st of October, 1781, ante. pa. 8, (chap. 944,)—31st of January, 1783, (chap. 991,)—22d of September, 1785, (chap. 1183,)—10th of March, 1787, (chap. 1260,) and 20th of November, 1789, (chap. 1455)

By the act of 22d of September, 1785, (which repealed every preceding act and regulation for granting and paying pensions to disabled officers, non-commissioned officers, privates mariners and seamen) The power to decide on applications for pensions was vested in the Orphans' courts of the respective counties; but by the act of 10th of March, 1787, that jurisdiction was transferred to the Supreme court. An authority was also given to the executive, to form a corps of invalids, to guard the public records at the State-house,

which was likewise rescinded by act of 27th of March, 1789, (chap. 1404, § 4,) which latter act (§ 4,) at the same time (contemplating the provision made upon the subject by Congress) declared that so much of the act of 22d September, 1785, (or of any other act) as authorized or required the payment of pensions to the persons in that act described, beyond the 1st of May, 1789, should be void. A temporary appropriation of money, however, was made, for the immediate relief of the pensioners by the act of 20th of November, 1789, upon an assignment of an equal amount of their pensions payable at the treasury of the United States on the 25th of March, 1790.

The offices of Comptroller and Register-General, mentioned in the act in the text, are abolished, and the duties transferred to other officers, see the act of 30th of March, 1811.

CHAPTER MCCCCLXXIII.

An additional SUPPLEMENT to the several acts of Assembly respecting public auctions and auctioneers.

SECT. I. WHEREAS the acts of Assembly, now in force in this commonwealth, for regulating sales by public auction within the districts in the same acts specified, have been found defective in some important particulars: Therefore,

SECT. II. *Be it enacted, and it is hereby enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same, That it*

[See vol. 1, pa. 509, chap. 908, and the notes thereto, for a reference to all the laws respecting auctions.]

1790.

Two additional auctioneers to be licensed,

to give bond in £. 2000 each;

and to possess like powers, and subject to like penalties, as former auctioneers.

Duties on sales at auction one per cent.

shall and may be lawful for the President or Vice-President in Council to appoint and license two additional auctioneers, one for the city of Philadelphia, and one for the Northern-Liberties, for the sale of estates real and personal within the same respectively, who shall continue in office for and during the will and pleasure of the said President and Council, and shall severally give bond to the President and his successors, with two or more sufficient sureties, in the sum of two thousand pounds, conditioned for the faithful discharge of their and every of their respective duties, and for well and truly performing the terms and payments in and by this act, and the several acts of General Assembly to which this is a supplement, directed and required; and the said auctioneers, who shall be appointed and licensed in pursuance of this act, shall severally and respectively have and possess, within the said city and Northern-Liberties, townships and district, respectively, the like powers and exclusive authorities, and be under the like regulations, provisions and restrictions, and subject to the like pains and penalties, which the auctioneers within the said city, townships and district, respectively, had, possessed or were subject to, before the passing of this act, within their respective districts.

SECT. III. *And be it further enacted by the authority aforesaid,* That from and after the passing of this act, the duties to be paid to the treasury of this commonwealth, on the sale of all goods, wares and merchandize, by public auction, shall be one *per centum*, and more.

Passed 27th March, 1790.—Recorded in Law Book No. IV. page 82.

CHAPTER MCCCCLXXXIV.

An ACT to provide for the safety of the records of the several counties in this commonwealth, and for other purposes therein mentioned.

SECT. I. WHEREAS the safety of the papers and records belonging to or in the custody of the Prothonotaries, Registers and Recorders of the several counties of this commonwealth, is an object of great importance to the good citizens thereof:

SECT. II. *Be it therefore enacted, and it is hereby enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same,* That the commissioners of each county of this commonwealth, with the approbation of the Justices of the county court of Quarter Sessions and Grand Jury of their respective counties, shall be, and they are hereby authorized and empowered to cause to be erected a suitable building or buildings of brick or stone, on the most safe and secure plan to avoid the ravages of fire, at the place appointed by law for holding the courts in their respective counties for the reception and safe keeping of the records and other papers belonging to and in the custody of the Prothonotary of the county court of Common Pleas, the Clerk of the county court of Quarter Sessions, the

SECT. III. To be erected in each county, for the safe keeping of the records.

Clerk of the Orphans' court, the Recorder of deeds, and the Register for the probate of wills and granting letters of administration, of their respective counties. 1790.

SECT. III. *And be it further enacted by the authority aforesaid,* That the several officers before mentioned, upon due notice from the commissioners of the respective counties, as soon as such suitable buildings shall have been constructed, as aforesaid, in their respective counties, shall be, and they are hereby required to deposit and keep the records and papers belonging to their respective offices in the said buildings, under the penalty of two hundred pounds, to be recovered by action of debt, bill or information, the one half to be paid to the county treasurer of the county in which such courts shall be respectively held, and applied to the payment for or repairing of the buildings herein directed to be erected, the other half to the use of him or her who shall sue for the same.

County officers to deposit their records in such buildings.

SECT. IV. And whereas suitors and others, having business to transact at the different public offices in the several counties of this commonwealth, are frequently subject to great delays, trouble and inconvenience, by reason of the several public offices being held at a distance from each other, and it is just and reasonable that those persons who hold public offices of trust and profit should accommodate their residence to the ease and convenience of the public : And whereas some time may elapse before the buildings herein before directed may be prepared for the reception and safe keeping of the records and papers aforesaid : *Be it therefore enacted by the authority aforesaid,* That, from and after the first day of January, one thousand seven hundred and ninety-one, as well the officers herein mentioned, as the Sheriff of each respective county, shall keep their offices in such town or place, as is or shall be by law established for holding the courts for such counties, under the penalty of two hundred pounds, to be recovered by action of debt, bill or information, the one half to be paid to the county treasurer of the county in which such courts shall respectively be held, and applied to the payment for, or repairs of, the buildings herein directed to be erected, the other half thereof to the use of him or her who shall sue for the same.

County officers and Sheriffs to keep their offices in the county towns.

Passed 27th March, 1790.—Recorded in Law Book No. IV. page 77. (*d*)

(*d*) By the third section of the fourth article of the Constitution, it is declared that all county officers shall keep their offices in the county town of their respective counties, "unless when the Governor shall, for special reasons, dispense therewith for any term, not exceeding five years after the county shall have been erected." (*Note to former edition.*)

CHAPTER MCCCCLXXXV.

A further SUPPLEMENT to the act of Assembly, entitled "An act for the relief of insolvent debtors within the province of Pennsylvania." [See vol. 1, pa. 181, chap. 315, and the notes thereto, for a reference to all the laws on this subject.]

SECT. I. IN order to remedy several defects and inconveniences in the laws now in force within this state, for the purpose of granting relief to insolvent debtors :

1790.

The court may allow further time to creditors, for enquiring respecting insolvent debtors applying to be discharged.

SECT. II. *Be it enacted, and it is hereby enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same,* That if, upon hearing the petition of any insolvent debtor, praying relief from personal imprisonment, according to the several acts of Assembly in such case made, and application on the part of any of the creditors of such debtor, it shall appear to the court having cognizance thereof to be reasonable and expedient, to allow further time for such creditor or creditors to make enquiry relative to the estate and effects of such debtor, it shall be lawful for such court to remand such debtor for such time, as, in their discretion, shall be thought sufficient for such enquiry.

Debtor remanded, on suspicion of fraud, may nevertheless be discharged, after twelve months actual confinement.

SECT. III. *Be it further enacted by the authority aforesaid,* That where any such debtor has been or shall be remanded to gaol, by reason of a strong presumption of fraud, within the meaning of the several acts of Assembly in such case made and provided, it shall be lawful for the court having cognizance thereof to discharge such person from imprisonment, upon the like terms and conditions, and in the like manner, as in the said acts of Assembly is made and provided, in such reasonable time after having been so remanded, as the court, having regard to the misconduct of the party, shall in their discretion think expedient; provided that no such person be discharged from imprisonment, until he or she shall have been in actual confinement twelve calendar months from the time of being so remanded.

Bankrupt, not having a certificate, may be discharged from imprisonment, after twelve months actual confinement.

SECT. IV. *Be it further enacted by the authority aforesaid,* That where any person hath been or shall be adjudged a bankrupt, and may not have obtained a certificate of conformity within the several acts of Assembly of this state for the regulation of bankruptcy, and shall, upon his petition to the court having cognizance thereof, pray relief from personal imprisonment, it shall be lawful for the court, due notice having been given, as well to the creditors of such petitioner, as to the commissioners named and authorized in such commission of bankruptcy, to discharge such petitioner from imprisonment; provided no such person shall be discharged from imprisonment, until he shall have been in actual confinement, for the space of twelve calendar months.

Felons under sentence for restitution, may be discharged.

SECT. V. *Be it further enacted by the authority aforesaid,* That where any felon shall have been convicted, and sentenced, among other things, to make restitution to the party aggrieved, it shall be lawful for the court in which such felon shall have been convicted, upon his petition, praying the benefit of this act, and upon due notice to the creditors of such petitioner, to order and direct such additional labour to be performed by such felon, in like manner and for the like uses and purposes as was before awarded by the court in which such felon was convicted, as shall, in their judgment, be a sufficient commutation for such restitution, and it shall be lawful for such court, upon due proof that such additional term of labour hath been fully complied with, to order such felon to be discharged from further imprisonment, so far as relates to the claims of any person or persons entitled to restitution, as aforesaid.

SECT. VI. *Be it further enacted by the authority aforesaid, 1790.* That where any insolvent debtor, being of the age of fifty years, or upwards, and married, or having a charge of children, shall by his petition, pray the benefit of this act, it shall be lawful for the court, having cognizance thereof, besides the like relief, upon the like terms and conditions, as by the several acts of Assembly for the relief of insolvent debtors is made and provided, to give such petitioner a certificate, which shall operate, with regard to all debts due previously to granting the same, as a discharge both of the person of such petitioner, and of such property as he or she may afterwards acquire; provided such debtor shall not, at the time of making such application for the benefit of this act, be indebted to any one person in a greater sum than twenty pounds; provided also, that any person, who, having received such certificate, shall afterwards be imprisoned on account of any debts contracted after receiving the same, shall not again be entitled to the like benefit.

An insolvent debtor of 50 years or upwards, married, or having a charge of children, may be discharged, and have a certificate exonerating him from his debts.

No person twice entitled to such certificate.

SECT. VII. *Be it further enacted by the authority aforesaid,* That it shall not be lawful to discharge any insolvent debtor from imprisonment, unless at least fifteen days notice of the time appointed for hearing such debtor shall have been given to his or her creditors, under the regulations and restrictions in the several acts of Assembly in such cases provided.

Fifteen days notice to be given, before the insolvent is discharged.

SECT. VIII. *And be it further enacted by the authority aforesaid,* That where, at the time of any debtor's application to the court for the benefit of the said insolvent acts, there shall be any action or actions depending in the said court or any other court within this state, or judgments obtained against such debtor at the suit of any person or persons, not inhabitants of this state, it shall and may be lawful for the said court to order the discharge of the said debtor from imprisonment, as to the debt or debts demanded, in such action or judgments, on due notice having been given to the attorney at law for the plaintiffs in the said actions, or to the attorney in fact, or known agent, of the said plaintiff, although the creditor or creditors may not have been personally served with any such notices.

Where notice to the attorney at law shall be sufficient.

Passed 27th of March, 1790.—Recorded in Law Book No. IV. page 23.

CHAPTER MCCCCLXXXVII.

A SUPPLEMENT to the act, entitled "An Act for erecting the southwest part of the county of Cumberland into a new county."

SECT. I. WHEREAS doubts have arisen, concerning that part of the boundary line between the counties of Cumberland and Franklin, near the town of Shippensburg: For remedy whereof, and to the end that the boundaries between the said counties of Cumberland and Franklin be certainly known,

[Original act, ante. page 264 chap 1096.]

SECT. II. *Be it enacted, and it is hereby enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same,* That a line, beginning at York county line, in the South Mountain, at the intersection of Lurgan and Hopewell townships; thence by a line

The boundary between Cumberland and

1790.
Franklin
ascertained.

composed of part of the original line of Lurgan township, and one to be run, so as to leave the tract of land now or late of Edward Shippen, Esquire, whereon the town of Shippensburg is erected, within the county of Cumberland, to the line of Fannet township; thence by the lines of the last mentioned township, (leaving the same in Franklin county) to the line of Bedford county; shall be, and the same is hereby declared to be the boundary line between the counties of Cumberland and Franklin.

Passed 27th March, 1790.—Recorded in Law Book, No. IV. page 83.

CHAPTER MCCCCXCII.

An ACT to authorize the sale of the Barracks in the borough of Lancaster, and the lot or lots on which they are erected, and for other purposes therein mentioned.

Passed 30th March, 1790.—Recorded in Law Book No. IV. page 83. (e)

(e) The sole object of this act being for the sale of the Barrack lots, and putting a new roof on the powderhouse; and those objects having been accomplished, it is necessary only to retain the title.

CHAPTER MCCCCXCIV.

An ACT to repeal an act, entitled “An Act for ascertaining and confirming to certain persons, called Connecticut claimants, the lands by them claimed within the county of Luzerne, and for other purposes therein mentioned.”

SECT. 1. WHEREAS an act of Assembly, enacted the twenty-eighth day of March, one thousand seven hundred and eighty-seven, entitled “An Act for ascertaining and confirming to certain persons, called Connecticut claimants, the lands by them claimed within the county of Luzerne, and for other purposes therein mentioned,” hath been found, in its principles and operations, to be unjust and oppressive, inasmuch as it divested many citizens of this state of their lands without their consent, and without making them any just compensation: And whereas depriving individuals of their property in such a summary way is unconstitutional, and of the most dangerous consequence: And whereas said act was enacted by the Legislature hastily, without due consideration had, and proper information of the magnitude of the grant: And whereas carrying said act into effect would impose a grievous burthen on the good citizens of this state, to make compensation to those who would thereby be divested of their property: And whereas the reasons set forth in the preamble of said act do not appear sufficient to warrant any legislative interference, or departure from the established rules of justice, in respect to private property, nor hath had the effect proposed:

SECT. II. *Be it therefore enacted, and it is hereby enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same,*

[Chap. 1274,
and see *Van-
horne's lessee
v. Dorrance*,
2 Dallas,
304.]

That the act, entitled "An Act for ascertaining and confirming to certain persons, called Connecticut claimants, the lands by them claimed within the county of Luzerne, and for other purposes therein mentioned," be, and the same is hereby repealed, and all proceedings had under said act are hereby rendered void, and declared to be null and of no effect; and all titles and claims which might be supposed to be affected by said act are hereby re-vested in the former owners, in as full and ample a manner as if the said act had never been enacted, any thing in the same to the contrary notwithstanding.

1790.

Repeal of
the law
confirming
the estates of
the Connecticut
claimants.

SECT. III. And whereas it hath been represented to this house, that judgment has been obtained in sundry actions of ejectment brought in the court of Common Pleas for the county of Northumberland, for sundry tracts of land now lying within the county of Luzerne, at the suit of persons claiming under titles derived from the late Proprietaries of Pennsylvania, in which judgment by default has been recovered against persons holding such lands by virtue of rights or titles derived from or under the state of Connecticut, and it is right and just that the defendants in such actions should not be dispossessed without a trial by jury: *Be it therefore enacted by the authority aforesaid, That no writ or writs of Scire Facias, or Habere, Facias Possessionem, shall issue from the said court to revive such judgments, or to carry them into effect; but original suits in ejectment, for recovery of any such tracts of land within the said county, may be brought at the suit of such Pennsylvania claimants, or any of them.*

Process not
to issue on
judgments
obtained by
default,
against the
Connecticut
claimants.

Passed 1st April, 1790.—Recorded in Law Book No. IV. page 96.

CHAPTER MCCCCXCVII.

An ACT for appointing two additional Trustees for the county of Huntingdon.

SECT. I. WHEREAS, by the act for erecting part of Bedford county into a separate county, by the name of Huntingdon county, three of the five trustees therein named were appointed as residents in the town of Huntingdon, for the greater convenience of forming a necessary quorum, in order to the execution of the trust committed to them: And whereas, by the death of one of the said trustees, the removal of another from the said town, and the intention of a third to remove soon from the county, there remains but one of the said trustees who has his usual residence in the said town, and it is become difficult to assemble any three of the said trustees for the necessary business of the county: For remedy whereof,

[See chas.
1800, ante,
p. 517.]

SECT. II. *Be it enacted, and it is hereby enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same, That Andrew Henderson and Richard Smith, of the town of Huntingdon aforesaid, be, and they are hereby, appointed trustees, in conjunction with the surviving trustees named in the said act, and now*

Two additional
trustees appointed for
Huntingdon
county.

1790. residing within the said county; and they, or a majority of them, heretofore and now appointed, and residing within the said county, shall have and execute all the powers, trusts and duties, committed to the five trustees in the act for erecting the said county, in the same manner, and as fully, as if the said Andrew Henderson and Richard Smith had been originally appointed trustees in the said act.

Passed 2d April, 1790.—Recorded in Law Book No. IV. page 103-4.

CHAPTER MCCCCXCVIII.

A further SUPPLEMENT to the act, entitled "An Act to incorporate the city of Philadelphia."

SECT. I. WHEREAS the power of appointing collectors of the taxes for paving, lighting and watching the streets of the city of Philadelphia, was formerly vested in the city assessors, and since those officers have been by law directed no longer to be chosen, the authority of appointing such collectors has lapsed: And whereas, by the thirty-fifth section of the act to incorporate the city of Philadelphia, the Mayor, Recorder, Aldermen and Common Council-men are empowered to execute and perform all such matters and things, as the Wardens and Street Commissioners were, at and immediately before the passing of the said act, respectively authorized and enabled by law to do; and by the thirty-sixth section of the said act, the Mayor or Recorder, and four of the Aldermen, are empowered to do and perform all such matters and things, as the said Wardens and Street Commissioners were, respectively, at and immediately before the enacting the said act, authorized and enabled by law to do and perform, in conjunction with any Justice or Justices of the peace of and for the city and county of Philadelphia, or either of them: And whereas it will be more convenient and beneficial, that instead of separating and dividing the above mentioned powers, as the said act directs, that the whole of the said powers should be vested in and exercised by such person or persons, and in such manner, as the said Mayor or Recorder, Aldermen and Common Council-men, in Common Council assembled, shall regulate, ordain, enact or appoint: And whereas some of the existing laws, relative to the paving, lighting and watching the streets of the city of Philadelphia, contain regulations which are now somewhat inconvenient, and others which may be improved: Wherefore it will be most convenient and proper to invest the said Mayor, Aldermen and Citizens of Philadelphia, with the power of legislating, estimating and raising of taxes, so far as respects the lighting, watching, watering, pitching, paving and cleaning the streets of the city, unrestrained by any of the said existing laws relative thereto:

SECT. II. *Be it therefore enacted and it is hereby enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same, That from and after the passing of this act, the Mayor, Recorder, Aldermen and Common Council-men, in Common Council assembled, shall have full power and authority to make, ordain, constitute and*

[See the original act, ante, pa. 462, chap. 1393.]

The Corporation empowered to assess and levy taxes for lighting,

establish, such and so many laws, ordinances, regulations and constitutions, as shall be convenient and necessary for the purposes of estimating, assessing, raising and levying of taxes upon the persons of single men, and upon the estates, real and personal, of the inhabitants of the city of Philadelphia, for the purposes of lighting, watching, watering, pitching, paving and cleansing of the streets, lanes and alleys of the said city, and directing, appointing and regulating the time, order and manner of estimating, assessing, raising, levying and collecting of the said taxes, and of lighting, watching, watering, pitching, paving and cleansing the said streets, lanes and alleys, any law of the General Assembly of Pennsylvania, heretofore made, to the contrary, in any wise, notwithstanding.

1790.

watching,
watering,
pitching,
paving and
cleansing
the streets
of Philadel-
phia.

SECT. III. And whereas, by acts of Assembly existing at the time the said act to incorporate the city of Philadelphia was enacted, the late Wardens of the city, with two Justices of the peace, were empowered to regulate and fix the rates and prices to be taken by waggoners, carters, draymen, porters and wood-sawyers: And whereas it is reasonable that the prices and rates to be taken by chimney-sweepers should be regulated by the Mayor, Aldermen and Citizens of Philadelphia, and that all the various powers and authorities, which, at the time of making the said act to incorporate the city of Philadelphia, were vested in the said Wardens and Street Commissioners, jointly or severally, or which were vested in the said Wardens and Street Commissioners, respectively, in conjunction with one or more Justice or Justices of the peace for the city and county of Philadelphia, should be vested in the said Mayor, Aldermen and Citizens of Philadelphia: Therefore, *Be it further enacted by the authority aforesaid*, That, from and after the enacting hereof, the Mayor, Recorder, Aldermen and Common Councilmen, in Common Council assembled, shall have full power and authority to make, ordain, constitute and establish, such and so many laws, ordinances, regulations and constitutions, as shall be necessary and convenient for the purposes of fixing, ascertaining and regulating, from time to time, the rates and prices, which shall be demanded and received by waggoners, carters, draymen, porters, wood-sawyers and chimney-sweepers, for each and every labour and service which they shall respectively do and perform within the said city of Philadelphia; and also for the doing, performing and executing all and every other power, authority, act, matter and thing whatsoever, which the said Wardens and Street Commissioners separately of themselves, or they, or either of them, in conjunction with one or more Justice or Justices of the peace, or with any other person or persons whatsoever, were authorized and empowered, or might or could lawfully do or perform, by or under any laws in force at the time the act to incorporate the city of Philadelphia was made.

The corporation may regulate the prices of waggoners, draymen, porters, wood-sawyers and chimney sweepers:

and such things as the Wardens and Street Commissioners might have done.

SECT. IV. *And be it further enacted by the authority aforesaid*, That so much of the thirty-fifth and thirty-sixth sections of the act to incorporate the city of Philadelphia, as is by this act altered or supplied, is hereby declared to be repealed. *Provided nevertheless*, That the consent and approbation of the Mayor or Recorder, and of a majority of the Aldermen, and also of the Common Councilmen,

Repeal of part of the former law.

By what majority ordinances

1790. who shall from time to time be present, and in Common Council assembled, shall be necessary to the making, ordaining, or establishing of all such rules, regulations, appointments, laws, ordinances and constitutions, as the said Mayor, Recorder, Aldermen, and Common Council-men, in Common Council assembled, shall make, or claim and establish.

Passed 2d April, 1790 —Recorded in Law Book No. IV. page 100.

CHAPTER MCCCCXCIX.

An ACT to incorporate the Carpenter's Company of Philadelphia.

Passed 2d April, 1790 —Private Act.—Recorded in Law Book No. IV. page 97.

CHAPTER MD.

An ACT for altering a certain clause in the charter of the corporation for the relief of the widows and children of clergymen of the Protestant Episcopal Church in the United States of America.

Passed 2d April, 1790.—Private Act.—Recorded in Law Book No. IV. page 102.

CHAPTER MDI.

A SUPPLEMENT to the several acts of Assembly of this state relative to the inspection of staves, heading and lumber.

SECT. I. WHEREAS it frequently happens that staves and heading are suddenly taken from the lumber yards on board of vessels, without affording an opportunity to inspect and cull the same : And whereas the penalty for mixing cullings and unmerchantable staves and heading with such as have been adjudged merchantable is confined to the exporter, and thus the innocent may suffer, while the guilty escape : And whereas the acts of Assembly of this state for regulating the exportation of lumber have been found, in other respects, inadequate to the purposes intended :

SECT. II. *Be it therefore enacted, and it is hereby enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same,* That all staves and heading brought into the city of Philadelphia, the district of Southwark, or the Northern-Liberties, shall before they are delivered to the person or persons to whom the same may be consigned or sold, and before the same are received into any lumber yard or other place for sale or exportation, be inspected and culled by the officer or officers appointed by the laws now in force, or by his or their deputy or deputies ; and if any person or persons shall offend in the premises, he or they shall forfeit the staves or heading delivered or received as aforesaid, one half to the use of the commonwealth, the other half to the use of the informer.

See the original act, vol. 1, p. 232, chap. 439, and the notes thereon.

Staves and heading to be inspected, before delivered.

Penalty on transgressing.

SECT. III. *And be it further enacted by the authority aforesaid,* 1790. That if any person or persons shall mix any staves or headings which shall have been adjudged merchantable, with any cullings or unmerchantable staves or headings, or with any staves or heading which have not been inspected, he or they shall forfeit the whole so mixed, one half to the use of the commonwealth, the other half to the use of the informer.

Penalty for mixing merchantable heading with unmerchantable or uninspected.

SECT. IV. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful to export staves commonly called and known by the name of Leogan staves, and used for sugar hogsheds, provided they be four feet six inches long, three and an half inches broad, including sap, if it be sound, and half an inch thick, any law, usage or custom, to the contrary notwithstanding, subject nevertheless to the same inspection as other staves.

Leogan staves, of certain dimensions, may be exported.

SECT. V. *And be it enacted by the authority aforesaid,* That the officer appointed for inspecting and culling staves shall have four shillings and two-pence for every thousand of pipe staves and hogsheds, and three shillings and four-pence for every thousand of all other kind of staves and heading. *Provided always,* That nothing in this act contained shall debar any cooper from purchasing a sufficient quantity of staves or heading, uninspected, and unculled, to make up into casks, or to use in the way of his business within this state.

Compensation of the inspector.

Coopers may use uninspected and unculled staves or heading within this state.

SECT. VI. *And be it further enacted by the authority aforesaid,* That so much of the act of Assembly, entitled "An act to prevent the exportation of bad or unmerchantable staves, heading, boards and timber," and of the act, entitled "An act to amend the act, entitled "An act to prevent the exportation of bad and unmerchantable staves, heading, boards and timber;" as is hereby altered and supplied, shall be, and is hereby declared to be, repealed and made void; and that the residue thereof shall be, and is hereby declared to be in full force and virtue, to all intents and purposes, as if this act had not been made.

Repeal of parts of former laws;

and confirmation of the rest.

SECT. VII. *Be it further enacted by the authority aforesaid,* That any person whatever who shall act as a deputy inspector of staves, heading or lumber, not being lawfully authorized and deputed so to do, shall forfeit and pay, for every such offence, the sum of five pounds, to be recovered as debts of like value may be recovered by the laws of this commonwealth, one half to the use of the person suing, the other half to the use of the poor of the city and county of Philadelphia.

Penalty on persons acting as deputy inspectors, without authority.

Passed 5th April, 1790.—Recorded in Law Book No. IV. page 119.

CHAPTER MDIII.

An ACT to suspend for a limited time the operation of an act, entitled "An act for the inspection of shingles," and for other purposes therein mentioned.

[Ante. p. 504, chap. 1440.]

SECT. III. *AND be it further enacted by the authority aforesaid,* That the shingles of the third kind mentioned in the said act, Dimensions and package of shingles of

1790.
the third
class.

when sold in bundles, shall be packed in a close and compact manner in the same bundles, each of which shall contain one hundred and twenty-five shingles, and no more, and each row in every of the said bundles shall contain three shingles, and no more, and shall measure fifteen inches, and that no such shingles shall measure less than three inches and a half in breadth, any thing in the said act to the contrary hereof in any wise notwithstanding.

Passed 5th April, 1790.—Recorded in Law Book No. IV. page 118.

CHAPTER MDIV.

[See ante.
page 493,
chap. 1425.]

An ACT for appointing an additional trustee for the county of Mifflin.

SECT. I. WHEREAS, by the ninth section of an act of this commonwealth, entitled "An act for erecting certain parts of Cumberland and Northumberland counties into a separate county," John Oliver, William Brown, David Beal, John Stewart, David Bowel and Andrew Gregg, of said county, were appointed trustees for the county aforesaid, with full authority for them, or a majority of them, to purchase, or take and receive by grant, bargain or otherwise, any quantity or quantities of land, not exceeding one hundred and fifty acres of land, on the north side of Juniata river, and within one mile from the mouth of Kishacoquillis creek, for the use, trust and benefit of said county, and to lay out the same into regular town-lots, and to dispose of so many of them, as they or any four of them, may think best for the advantage of said county: and they or any four of them, are thereby authorized to sell and convey so many of them as they may think proper, and with the monies so arising from the sale of said lots, and with other monies to be duly assessed, levied and collected, within the said county of Mifflin, for that purpose, which is hereby declared it shall and may be lawful for the commissioners thereof to do, or cause to be done, to build and erect a court-house and prison, suitable and convenient for the public, on the public and such other square as shall be reserved for that purpose; and the said trustees shall, from time to time, render true and faithful accounts of the expenditures of the same, not only to the commissioners, but to the grand jury, for inspection, adjustment and settlement of the accounts of said county: And whereas David Bowel, one of the said trustees, does not reside within the limits of the said county of Mifflin, and as the act erecting Mifflin county requires four trustees to concur in every transaction done under and in virtue of their appointment:

SECT. II. *Be it therefore enacted, and it is hereby enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same,* That Dr. James Armstrong is hereby appointed a trustee in and for the county of Mifflin, and is hereby invested with like powers and authorities, in every matter and thing whatsoever, that of right

Dr. J. Arm:
strong ap-
pointed an
additional
trustee for

belongs to any trustee appointed for the county of Mifflin, by the act 1790. herein before recited.

Mifflin
county.

Passed 5th April, 1790.—Recorded in Law Book No. IV. page 117.

CHAPTER MDV.

An ACT to reform the penal laws of this state.

SECT. I. WHEREAS, by the thirty-eighth section of the second chapter of the constitution of this state, it is declared, "That the penal laws, as heretofore used, should be reformed by the legislature as soon as may be, and punishments made in some cases less sanguinary, and in general more proportionate to the crimes," and by the thirty-ninth section, "That to deter more effectually from the commission of crimes, by continued visible punishment of long duration, and to make sanguinary punishments less necessary, houses ought to be provided for punishing, by hard labour, those who shall be convicted of crimes not capital, wherein the criminal shall be employed for the benefit of the public, or for reparation of injuries done to private persons."* And whereas the laws heretofore made for the purpose of carrying the said provisions of the constitution into effect have in some degree failed of success, from the exposure of the offenders employed at hard labour to public view, and from the communication with each other not being sufficiently restrained within the places of confinement; and it is hoped that the addition of unremitted solitude to laborious employment, as far as it can be effected, will contribute as much to reform as to deter:

[* Constitution of 28th Sept'r, 1776.]

SECT. II. *Be it therefore enacted, and it is hereby enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania in General Assembly met, and by the authority of the same,* That the pains and penalties herein after mentioned shall be inflicted upon the several offenders, who shall, from and after the passing of this act, commit and be legally convicted of any of the offences herein after enumerated and specified, in lieu of the pains and penalties which by law have been heretofore inflicted; that is to say, every person convicted of robbery, burglary, sodomy or buggery, or as accessory thereto before the fact, shall forfeit to the commonwealth all and singular the lands and tenements, goods and chattels, whereof he or she was seized or possessed at the time the crime was committed, and at any time afterwards, until conviction, and be sentenced to undergo a servitude of any term or time, at the discretion of the court passing the sentence, not exceeding ten years, in the public gaol or house of correction of the county or city, in which the offence shall have been committed, and be kept at such labour, and fed and clothed in such manner, as is herein after directed: *Provided always, and be it further enacted by the authority aforesaid,* That no person accused of any of the aforesaid crimes shall be admitted to bail but by the Judges of the Supreme Court,* or some or one of them, nor shall he or she be tried but in the Supreme Court, or

Punishment in cases of robbery, burglary, &c. or as accessory before the fact.

Such offenders, by whom to be bailed, and where tried.
* [By the Presidents of

1790.

the Common Pleas, by act of 21st of March, 1806, chap. 2687, sect. 4.] Of challenges. Of attainder.

† [See sect. 15 of the act of 22d of April, 1794. Sup. 1766, and see act of 31st of April, 1809.]

[See 19 sect. of the 9th article of the constitution.]

Punishment in case of horse-stealing, or as accessory before the fact

[See vol. 1, p. 273, 501.] Punishment for simple larceny to the value of twenty shillings, or as accessory before the fact.

[See act of 21st of March, 1806, chap. 2687.]

in a court of Oyer and Terminer or General Gaol Delivery, held in and for the county wherein the offence shall have been committed; and that peremptory challenges shall be allowed in all such cases wherein they have been heretofore allowed by law :† But no attainder hereafter shall work corruption of blood in any case, nor extend to the disinherison or prejudice of any person or persons other than the offender.‡

SECT. III. *And be it further enacted by the authority aforesaid,* That every person convicted of horse-stealing, or as accessory thereto before the fact, shall restore the horse, mare or gelding, stolen, to the owner or owners thereof, or shall pay to him, her or them, the full value thereof, and also pay the like value to the commonwealth; and moreover undergo a servitude for any term, not exceeding seven years, in the discretion of the court before which the conviction shall be, and shall be confined, kept to hard labour, fed and clothed in manner hereinafter mentioned.¶ Every person convicted of simple larceny to the value of twenty shillings and upwards, or as accessory thereto before the fact, shall restore the goods or chattels so stolen to the right owner or owners thereof, or shall pay to him, her or them, the full value thereof, or of so much thereof as shall not be restored; and moreover shall forfeit and pay to the commonwealth the like value of the goods and chattels stolen, and also undergo a servitude for any term of years, not exceeding three, at the discretion of the court before which the conviction shall be, and shall be confined, kept to hard labour, fed and clothed, in manner hereinafter directed.§

SECT. IV. And whereas, by the ninth section of the first chapter of the constitution, it is declared "That in all prosecutions for criminal offences, a man has a right to be heard by himself and his counsel, to demand the cause and nature of his accusation, to be confronted with the witnesses, to call for evidence in his favour, and a speedy public trial by an impartial jury of the county, without the unanimous consent of which jury he cannot be found guilty."¶ Since which declaration, it is not proper that persons accused of small or petty larcenies should be tried and convicted before two Magistrates or Justices of the peace without the intervention of a jury: *Be it therefore enacted by the authority aforesaid,* That the act of Assembly, entitled "An Act for the trial and punishment of larceny under five shillings," be, and the same is hereby repealed; and that if any person or persons shall hereafter feloniously steal, take and carry away any goods or chattels, under the value of twenty shillings, the same order and course of trial shall be had and observed as for other simple larcenies, and he she or they, being thereof legally convicted, shall be deemed guilty of petty larceny, and shall restore the goods and chattels so stolen, or pay the full value thereof, to the owner or owners thereof, and also forfeit and pay the like value to the commonwealth, and be further sentenced to undergo a servitude for a term not exceeding one year, in the discretion of the court before which such conviction shall be, and be confined, kept to hard labour, clothed and fed, in manner as hereinafter direct-

¶ Constitution of 29th of September, 1776.]

Repeal of the act for the trial of larceny under five shillings.

Larceny under twenty shillings to be tried as other simple larcenies.

How punished.

ed : And every person convicted of bigamy, or of being an accessory after the fact in any felony,* or of receiving stolen goods, knowing them to have been stolen, or of any other offence not capital, for which, by the laws in force before the act,† entitled “An Act to amend the penal laws of this state,” burning in the hand, cutting off the ears, nailing the ear or ears to the pillory, placing in and upon the pillory, whipping, or imprisonment for life, is or may be inflicted, shall, instead of such parts of the punishment, be fined, and sentenced to undergo in the like manner, and be confined, kept to hard labour, fed and clothed, as is hereinafter directed, for any term not exceeding two years,‡ which the court, before whom such conviction shall be, may and shall in their discretion think adapted to the nature and heinousness of the offence.

SECT. V. *And be it further enacted by the authority aforesaid,* That robbery or larceny of obligations or bonds, bills obligatory, bills of exchange, promissory notes for the payment of money,|| lottery tickets, paper bills of credit, certificates granted by or under the authority of this commonwealth, or of all or any of the United States of America, shall be punished in the same manner as robbery or larceny of any goods or chattels.

SECT. VI. And whereas by the eighth section of the act of Assembly, entitled “An Act for the advancement of justice, and more certain administration thereof,” it is enacted, that if any woman shall endeavour privately to conceal the death of her child, which, by being born alive, should by the law be deemed a bastard, so that it may not come to light whether it was born alive or not, and be convicted thereof, shall suffer death as in case of murder, “except such mother can make proof, by one witness at the least, that the child, whose death was by her so intended to be concealed, was born dead,” whereby the bare concealment of the death is almost conclusive evidence of the child’s being murdered by the mother, or by her procurement: *Be it therefore declared and enacted by the authority aforesaid,* That from and after the publication of this act, the constrained presumption that the child, whose death is concealed, was therefore murdered by the mother, shall not be sufficient evidence to convict the party indicted, without probable presumptive proof is given that the child was born alive.

SECT. VII. *And be it further enacted by the authority aforesaid,* That every other felony, or misdemeanor, or offence whatsoever, not specially provided for by this act, may and shall be punished as heretofore.§

SECT. VIII. *Be it enacted by the authority aforesaid,* That the commissioners for the county of Philadelphia, with the approbation of the Mayor and two of the Aldermen of the city of Philadelphia, and two of the Justices of the Court of Quarter Sessions for the county of Philadelphia, shall as soon as conveniently may be, cause a suitable number of cells to be constructed in the yard of the gaol of the said county, each of which cells shall be six feet in width, eight feet in length, and nine feet in height, and shall be constructed of brick or stone, upon such plan as will best prevent danger from fire; and the said cells shall be separated from the common

1790.

Punishment in cases of bigamy; being accessory after the fact in any felony; receiving stolen goods knowingly; or committing any other offence not capital; for which corporal punishment was formally inflicted.

†(See act of 23d of September, 1791, chap. 1572.)

‡(15th September, 1786.)

§(See the act of 4th of April, 1807, chap. 2805.)

Punishment in cases of robbery or larceny of paper securities.

|| (See the act to punish stealing of bank notes, 30th of January, 1810.)

Of the proof, in case of the murder of a new born bastard.

(See vol. 1, page 113, and the act of 22d of April, 1794, chap. 1706, sect. 17, 18.)

Crimes not punishable by this act to be punished as heretofore.

§(But now see the act of 22d of April, 1794, chap. 1766.)

Cells to be erected in the gaol yard.

1790. yard by walls of such height, as, without unnecessary exclusion of air and light, will prevent all external communication, for the purpose of confining therein the more hardened and atrocious offenders, who, by the act, entitled "An Act for amending the penal laws of this state," have been sentenced to hard labour for a term of years, or who shall be sentenced thereto by virtue of this act.

Expense of erecting the cells, how to be defrayed.

SECT. IX. *Be it enacted by the authority aforesaid,* That, for the purpose of defraying a proportionable part of the expense of erecting such cells and walls, the President and Supreme Executive Council shall be, and they are hereby authorized to draw orders on the State Treasurer for the sum of five hundred pounds, to be paid out of the funds especially appropriated for claims and improvements, when the same shall be sufficiently productive; and for defraying the residue of the expense, it shall be lawful for the commissioners of the said county, or a majority of them, to assess, levy and collect, within the said county, so much money, as they, with the concurrence and approbation of the said Mayor, Aldermen and Justices, shall judge necessary, provided the same does not exceed the sum of one thousand pounds.

Such cells declared to be a part of the gaol.

Who shall be confined in the gaol.

SECT. X. *Be it enacted by the authority aforesaid,* That the said cells shall be and are hereby declared to be part of the gaol of the city and county of Philadelphia; and the residue of the said gaol shall be appropriated to the purposes of confining as well such male convicts sentenced to hard labour, as cannot be accommodated in the said cells, as female convicts sentenced in like manner, persons convicted of capital offences, vagrants and disorderly persons committed as such, and persons charged with misdemeanors only, all which persons are hereby required to be kept separate and apart from each other, as much as the convenience of the building will admit, and to be subject to the visitation and superintendance of the Inspectors, hereinafter appointed.*

Vagrants and disorderly persons may be committed to hard labour.

* (See the act of 2d of April, 1803, chap. 2377.)

SECT. XI. *And be it further enacted by the authority aforesaid,* That it shall be lawful for the Mayor or any Alderman of the city of Philadelphia, and any Justice of the peace of the said county, to commit any vagrant or idle and disorderly person (being thereof legally convicted before him, as by law is directed) to the said gaol, to be kept at hard labour for any term not exceeding one month, any law of this state to the contrary notwithstanding.*

Provision for preventing contagious disorders.

SECT. XII. *Be it enacted by the authority aforesaid,* That, in order to prevent the introduction of contagious disorders, every person who shall be ordered to hard labour in the said gaol shall be separately lodged, washed and cleansed, and shall continue in such separate lodging, until it shall be certified by some physician that he or she is fit to be received among the other prisoners: and if such person be a convict, the clothes in which he or she shall then be clothed shall either be burnt, or, at the discretion of two of the said inspectors, be baked, fumigated and carefully laid by, until the expiration of the term for which such offender shall be sentenced to hard labour, to be then returned to him or her.

Convicts how to be treated, clothed,

SECT. XIII. *Be it enacted by the authority aforesaid,* That all such convicts shall, at the public expense of such county, during the

term of their confinement, be clothed [in habits of coarse materials, uniform in colour and make, and distinguishing them from the good citizens of this commonwealth,] and the males shall have their [heads and] beards close shaven at least once in every week, [and all such offenders shall, during the said term, be sustained upon bread, Indian meal, or other inferior food, at the discretion of said Inspectors, and shall be allowed one meal of coarse meat in each week, and shall be kept, as far as may be consistent with their sex, age, health and ability, to labour of the hardest and most servile kind, in which the work is least liable to be spoiled by ignorance, neglect or obstinacy, and where the materials are not easily embezzled or destroyed;] and if the work to be performed is of such a nature as may require previous instruction, proper persons for that purpose, to whom a suitable allowance shall be made, shall be provided by order of any two of the Inspectors hereafter named; during which labour the said offenders shall be kept separate and apart from each other, if the nature of their several employments will admit thereof; and where the nature of such employment requires two or more to work together, the keeper of the said gaol, or one of his deputies, shall, if possible, be constantly present.

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and kept at labour.

(Those parts of the section between brackets repeated by act of 18th of April, 1795. chap. 1950.)

SECT. XIV. *Be it enacted by the authority aforesaid,* That such offenders, unless prevented by ill health, shall be employed in work every day in the year, except Sundays: and the hours of work in each day shall be as many as the season of the year, with an interval of half an hour for breakfast, and an hour for dinner, will permit, but not exceeding eight hours in the months of November, December and January, nine hours in the months of February and October, and ten hours in the rest of the year; and when such hours of work are passed, the working tools, implements and materials, or such of them as will admit of daily removal, shall be removed to places proper for their safe custody, until the hour of labour shall return.

Times of working.

SECT. XV. *Be it enacted by the authority aforesaid,* That the keeper of the said gaol shall, from time to time, with the approbation of any two of the Inspectors, hereafter mentioned, provide a sufficient quantity of stock and materials, working tools and implements, for such offenders, for the expense of which the said Inspectors, or any two of them, shall be, and they are hereby, authorized to draw orders, to be countersigned by the commissioners of the county, on the Treasurer of the county, if need shall be, specifying in such orders the quantity and nature of the materials, tools or implements wanted, which orders the said Treasurer is hereby required to discharge out of the county stock, for which materials, tools and implements, when received, the said keeper shall be accountable; and the said keeper shall, with the approbation of any two of the said Inspectors, have power to make contracts with any person whatever, for the cloathing, diet, and all other necessaries for the maintenance and support of such convicts, and for the implements and materials of any kind of manufacture, trade or labour, in which such convicts shall be employed, and for the sale of such goods, wares and merchandizes, as shall be there wrought and manufactured; and the said keeper shall cause all accounts con-

Materials for working, how to be provided.

Contracts to be formed, to supply food, cloath, &c. to the convicts.

1790.

Accounts of
materials
bought, and
work done,
to be kept.

cerning the maintenance of such convicts and other prisoners to be entered regularly in a book or books, to be kept for that purpose, and shall also keep separate accounts of the stock and materials so wrought, manufactured, sold and disposed of, and the monies for which the same shall be sold, and when sold, and to whom, in books to be provided for those purposes, all which books and accounts shall be at all times open for the examination of the said Inspectors, and shall be regularly laid before them, at their quarterly or other meetings, as herein after is directed, for their approbation and allowance.

How frauds
in such
accounts
may be in-
vestigated.

SECT. XVI. *Be it enacted by the authority aforesaid,* That, if the said Inspectors, at their quarterly or other meetings, shall suspect any fraudulent or improper charges, or any omissions in any such accounts, they may examine, upon oath or affirmation, the said keeper, or any of his deputies, servants or assistants, or any person of whom any necessities, stock, materials, or other things, have been purchased for the use of the said gaol, or any persons to whom any stock or materials wrought or manufactured therein have been sold, or any of the offenders confined in such gaol, or any other person or persons concerning any of the articles contained in such accounts, or any omission thereout, and in case any fraud shall appear in such accounts, the particulars thereof shall be reported by the said, Inspectors, in writing, to the Mayor of the said city, for the purposes herein after mentioned.

Separate ac-
counts to be
kept with
the convicts;

SECT. XVII. *Be it enacted by the authority aforesaid,* That, in order to encourage industry as an evidence of reformation, separate accounts shall be opened in the said books for all convicts sentenced to hard labour, for six months and upward, in which such convicts shall be charged with the expenses of cloathing and subsistence, and such proportionable part of the expenses of the raw materials upon which they shall be employed, as the Inspectors at their quarterly or other meetings shall think just, and shall be credited with the sum or sums from time to time received by reason of their labour, and if the same shall be found to exceed the said expenses, one half of the said excess shall be laid out in decent raiment for such convicts at their discharge, or otherwise applied to their use and benefit, as the said Inspectors shall upon such occasions direct; and if such offender, at the end or other determination of his term of confinement, shall labour under any acute or dangerous distemper, he shall not be discharged, unless at his own request, until he can be safely discharged.

If the ba-
lance is in
their favour,
now to be
applied and
paid.

Who shall be
admitted to
visit the
gaol.

SECT. XVIII. *Be it enacted by the authority aforesaid,* That, no person whatever, except the keeper, his deputies, servants or assistants, the said Inspectors, officers and ministers of Justice, Counsellors or Attornies at law, employed by a prisoner, ministers of the gospel, or persons producing a written licence signed by two of the said Inspectors, shall be permitted to enter within the walls where such offenders shall be confined; and that the doors of all the lodging rooms and cells in the said gaol shall be locked, and all lights therein extinguished at the hour of nine, and one or more watchmen shall patrol the said gaol at least twice in every hour, from

that time, until the return of the time of labour in the morning of 1790. the next day.

SECT. XIX. *Be it enacted by the authority aforesaid,* That the walls of the cells and apartments in the said gaol shall be white-washed with lime and water, at least twice in every year, and the floors of the said cells and apartments shall be washed once every week, or oftener, if the said Inspectors shall so direct, by one or more of the said prisoners, in rotation, who at the discretion of the said keeper shall have an *extra* allowance of diet for so doing; and the said prisoners shall be allowed to walk and air themselves for such stated time as their health may require, and the said keeper shall permit; and if proper employment can be found, such prisoners may also be permitted, with the approbation of two of the said Inspectors, to work in the yard, provided such airing and working in the yard be in the presence, or within the view, of the said keeper, or his deputies or assistants.

Provision for cleaning the apartments and cells;

and for the exercise of the prisoners.

SECT. XX. *Be it enacted by the authority aforesaid,* That one or more of the apartments in the second story of the said gaol, and at the extreme end of the west wing, shall be fitted up as an infirmary, and in case any such offender, being sick, shall, upon examination of a physician, be found to require it, he or she shall be removed to the infirmary, and his or her name shall be entered in a book to be kept for that purpose, and when such physician shall report to the said keeper, that such offender is in a proper condition to quit the infirmary and return to his or her employment, such report shall be entered by the said keeper in a book to be kept for that purpose, and the said keeper shall order him or her back to his or her former labour, so far as the same shall be consistent with his or her state of health, and the said Mayor, Aldermen and Justices shall from time to time, appoint a physician to attend at said gaol.

An infirmary to be fitted up in the gaol; regulations respecting the same.

SECT. XXI. *Be it enacted by the authority aforesaid,* [That the keeper of the said gaol] shall have power to punish all such prisoners guilty of assaults within the said gaol, when no dangerous wound or bruise is given, profane cursing and swearing, or indecent behaviour, idleness, or negligence in work, or wilful mismanagement of it, or of disobedience to the orders and regulations herein after directed to be made, by confining such offenders in the dark cells or dungeons of the said gaol, and by keeping them upon bread and water only, for any term not exceeding two days; [and if any such prisoner shall be guilty of any offence within the said gaol, which the said keeper is not hereby authorized to punish, or for which he shall think the said punishment is not sufficient, by reason of the enormity of the offence, he shall report the same to two of the said Inspectors, who, if upon proper enquiry they shall think fit, shall certify the nature and circumstances of such offence, with the name of the offender, to the Mayor of the said city, and the Mayor shall thereupon order such offences to be punished by moderate whipping, or repeated whippings, not exceeding thirteen lashes each, or by close confinement in the said dark cells or dungeons, with bread and water only for sustenance, for any time not exceeding six days, or by all the said punishments.]

Prisoners guilty of assaults, &c. how to be punished.

(Quære.)

[That part of the section between crotchets is repealed by the act of 13th of April, 1795, chap. 1850.]

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Keeper of
the gaol,
how and
when to be
appointed.
[Those parts
between
crotchets,
repealed and
supplied by
the act of
18th of April,
1795, chap.)
1850.]

His compen-
sation.

Deputies
how to be
appointed.

Gaoler to
give bond;

to be record-
ed.

Inspectors
how to be
appointed,
and for what
term.
[See the 17th
section of the
act of 23rd
September,
1791, (chap.
1572.) but the
mode of ap-
pointment is
changed by
an act pas-
sed 23rd of
February,
1809.]
Penalty on
refusing to
serve as in-
spector.

Inspectors
when and
where to
meet; and
appoint act-
ing inspec-
tors.

SECT. XXII. *Be it enacted by the authority aforesaid,* That it shall be lawful for the Mayor and two Aldermen of the said city, and two of the Justices of the peace of the said county, on the first day of May annually, to appoint a suitable person to be keeper of the said gaol, who shall, however, be liable to be removed by the said Mayor, Aldermen and Justices aforesaid, when occasion may require, in which case another shall, from time to time, be appointed in like manner, who shall receive, as a full compensation for his services, and in lieu of all fees and gratuities by reason or under colour of the said office, so much *per annum*, as the said Mayor, Aldermen and Justices, at the time of such appointment, shall direct, to be paid in quarterly payments, by orders drawn on the Treasurer, of the said county, by the said Mayor, and also five *per centum* on the sales of all articles manufactured by the said criminals;] and such keeper shall have power, [with the approbation of the Mayor, Aldermen and Justices aforesaid,] to appoint a suitable number of deputies and assistants at such reasonable allowances [as the Mayor, Aldermen and Justices aforesaid, shall think just,] which allowances shall be paid quarterly, in like manner; and before any such gaoler shall exercise any part of the said office, he shall give bond to the Treasurer of the county, with two sufficient sureties, to be approved by the said Mayor, in the sum of five hundred pounds, upon condition, that he, his deputies and assistants, shall well and faithfully perform the trusts and duties in them reposed, which bond, the due execution thereof being proved before, and certified by, any of the Aldermen of the said city, shall be recorded in the office of the Recorder of Deeds for the county of Philadelphia, and copies thereof, exemplified by the said Recorder of Deeds, shall be legal evidence in all courts of law, in any suit against such gaoler, or his sureties.

SECT. XXIII. *Be it enacted by the authority aforesaid,* [That it shall be lawful for the said Mayor, Aldermen and Justices aforesaid, on the first Monday in May next, to appoint twelve Inspectors, six of whom shall be in office until the first Monday in November next, and six until the first Monday in May following, and so, from time to time, six Inspectors shall be appointed in manner aforesaid, on the first Mondays in May and November annually;] and if any person so appointed, not having a reasonable excuse, to be approved of by the said Mayor, Aldermen and Justices, shall refuse to serve in the said office, he shall forfeit and pay the sum of ten pounds, to be recovered by action of debt, as debts of like value are recoverable by the laws of this commonwealth, the one half thereof to the use of the person suing, the other half to be paid to the Treasurer of the said county, to be applied to the purposes herein before mentioned.

SECT. XXIV. *Be it enacted by the authority aforesaid,* That the said Inspectors, seven of whom shall be a quorum, shall meet once in three months, in an apartment to be provided for that purpose in the said gaol, and may be specially convened by the two acting Inspectors, when occasion shall require, and they shall, at their first meeting, appoint two of their members to be acting Inspectors, who shall continue such, for such time as shall be directed by the said

Inspectors, or a majority of them when met together. And the acting Inspectors shall attend at the said gaol at least once in each week, and shall examine into and inspect the management of the said gaol, and the conduct of the said keeper and his deputies, so far as respects the said offenders employed at hard labour and the directions of this act, and shall do and perform the several matters and things herein before directed by them to be performed. 1790.

The acting Inspectors when to meet, and their duty.

SECT. XXV. *Be it further enacted by the authority aforesaid,* That the board of Inspectors, at their quarterly or other meeting, shall make such further orders and regulations, for the purpose of carrying this act into execution, as shall be approved of by the Mayor and Recorder of the said city, and such orders and regulations shall be hung up in at least six of the most conspicuous places in the said gaol; and if the said keeper, or any of his deputies or assistants, shall obstruct or resist the said Inspectors, or any of them, in the exercise of the powers and duties vested in them by this act, such person shall forfeit and pay the sum of twenty pounds, to be recovered as aforesaid, and shall moreover be liable to be removed, in manner aforesaid, from his respective office or employment in the said gaol.

The board of Inspectors to make orders and regulations. [On the same subjects, See the act of 23rd September, 1791, (chap. 1572,) and see also the rules and regulations in the note to this act.]

SECT. XXVI. *Be it further enacted by the authority aforesaid,* That the present house of correction in the city of Philadelphia shall be reserved for the exclusive reception and confinement of debtors, and persons committed to secure their appearance as witnesses in criminal prosecutions, and not charged with any misdemeanor or higher offence, which witnesses, if bound in recognizances for their appearance in favour of the prosecution, shall be allowed the sum of six-pence *per diem*, to be paid out of the county stock. And the commissioners of the said county are hereby authorized to make such alterations in the same, not exceeding the sum of sixty pounds, as shall be necessary to accommodate all such prisoners; and to distinguish the said house of correction by a proper title, henceforward it shall be called and known by the name of "The Debtors' Apartment."

The house of correction to be converted into "The debtors apartment." [See the act of 4th of April, 1792, (chap. 1625,) the debtors apartment put under the management of the inspectors of the prison.]

SECT. XXVII. *Be it further enacted by the authority aforesaid,* That the keepers of the said gaol and of the said house of correction, respectively, shall forthwith exchange the several prisoners in their respective custody, conformable to the true intent and meaning of this act, and shall be, and are hereby, indemnified for all such prisoners as shall be safely delivered into proper custody, pursuant to the directions of this act.

Prisoners to be exchanged by the gaoler and keeper of the house of correction.

SECT. XXVIII. And whereas it may not at present be practicable to introduce all the above mentioned regulations into each of the counties of this state, although it is necessary that an uniformity of punishment should as much as possible prevail in all: *Be it enacted by the authority aforesaid,* That the malefactors sentenced to hard labour as aforesaid in the several counties of this state, other than the county of Philadelphia, shall be employed in the several gaols and work-houses in the respective counties, in such hard and servile labour, and fed and clothed in such manner as is herein before directed. And the Sheriff of the proper county, to whom the said malefactors shall be committed in execution of their sentence, shall,

Proceedings in the counties for confining and punishing convicts.

1790. from time to time, with the approbation of the Justices of the Court of Quarter Sessions of the proper county, in open court, appoint so many keepers of the said malefactors as shall be necessary, whose wages shall be ascertained and allowed by the said court, and paid by the Treasurer of the county, out of the monies in his hands raised for the use of the said county, by a warrant drawn by the said Sheriff, and at least one of the commissioners of the proper county, and that the duty of the said keepers shall be to superintend and direct their labours, manage and attend to their cloathing, diet and lodging, and take care that they be safely kept; and the better to effect this purpose, they shall have authority to confine in close durance, apart from all society, all those who shall refuse to labour, be idle, or guilty of any trespass, and during such confinement to withhold from them all sustenance, except bread and water; and also to put iron yokes around their necks, chains upon their leg or legs, or otherwise restrain in irons such as shall be incorrigible or irreclaimable without such severity.

Keeper of the gaol how to be proceeded against on a charge of partiality or cruelty.

SECT. XXIX. *Be it enacted by the authority aforesaid,* That the Court of Quarter Sessions of any such county shall have power, either *ex officio*, or upon information against any such keeper for partiality or cruelty, to call before them such keeper, together with the material witnesses, and enquire into his conduct, and if it shall appear that he hath been guilty of gross partiality or cruelty, it shall and may be lawful for the said court to suspend or remove him; and any of the Judges of the Supreme Court, when upon the circuit in such county, either on their own motion, or on complaint made by any other, may take original cognizance of the misbehaviour of any keeper, and remove him from office, if they see cause; and in case of suspension or removal of all or any of the said keepers, either by the Justices of the Quarter Sessions, or the Judges of the Supreme Court, the Sheriff of the proper county, with the approbation of the Justices of the Quarter Sessions of the same county, shall and he is hereby, authorized and directed to appoint another keeper or keepers, in the room of such as shall have been so suspended or removed.

The gaoler to furnish the commissioners with kalendar of the prisoners.

SECT. XXX. *Be it further enacted by the authority aforesaid,* That the keepers of the gaols and work-houses, or houses of correction, in such counties, shall, once in every three months, or oftener, if required, furnish the commissioners of their respective counties with a complete kalendar or list of all persons committed to their respective custody, under sentence of such servitude, together with the names of their crimes, the term of their servitude, in what court condemned, the ages and the description of the persons of such as shall appear to be too old and infirm, or otherwise incapable to undergo hard labour out of the gaols or work-houses, and the said commissioners shall, at the charge of the proper county, provide the cloathing and the food herein before directed for them, as also such articles and materials of labour and manufacture, as shall be most suitable for the employment of all those who are capable of labour or manufacture, and deliver the same to the said gaoler, or work-house keeper, taking a receipt therefor; and that the gaoler or work-house keeper shall render an account quarterly, or oftener,

Commissioners to make provision of cloathing, food, and materials for work.

Gaoler to render weekly

if required, to the commissioners, of the work done by the said malefactors, and dispose of the same in such manner as the commissioners shall direct; and the said commissioners are hereby authorized, from time to time, to draw orders, or give their warrants on the Treasurer of the proper county, for the advance of such sums as they shall think reasonable and necessary for carrying this act into execution, and all expenses and charges incurred, or to be incurred, by virtue of this act, shall be levied and raised as other county charges are, and be accounted for in like manner, excepting the said sum of five hundred pounds, directed by this act to be paid out of the treasury of the state, towards erecting the said cells in the yard of the gaol of the county of Philadelphia.*

ly account of work done. Commissioners to draw for expenses; and money how to be raised. [* See, on the subject of this section, the act of 4th of April, 1807, chap. 2805, which enforces it by penalties.]

Penalty in cases of involuntary escape.

(† 300 dollars, by act of 4th of April, 1807, chap. 2805.)

Punishment on convicts who escape. (See the 13th section of the act of 22d of April, 1794.)

Punishment in case persons pardoned offend again.

[Altered to imprisonment for life by the 13th section of the act of 22d of April, 1794.]

Felons how to be removed from other counties to the gaol of Philadelphia, and there maintained.

* [See the act of 21st of March, 1806, chap. 258.]

SECT. XXXI. *Be it enacted by the authority aforesaid,* That the said keepers of any of the gaols and houses of correction within this commonwealth, their deputies and assistants, in case any of the said offenders shall escape from confinement without the knowledge or consent of the said keepers, deputies or assistants, shall forfeit and pay the sum of ten pounds,† to be recovered and applied in manner aforesaid; provided that nothing in this act contained shall be deemed or taken to extend to escapes voluntarily suffered by any such keepers of the said gaols or work-houses.

SECT. XXXII. *Be it enacted by the authority aforesaid,* That if any such offender sentenced to hard labour shall escape, he or she shall, on conviction thereof suffer such additional confinement at hard labour, agreeably to the directions of this act, and shall also suffer such additional corporal punishment, not extending to life or limb, as the court, in which such offender shall have been convicted, shall adjudge and direct; and if any such offender shall, after his or her escape, be guilty of any offence, for which he or she would have been sentenced to death by the laws in force before the passing of the act, entitled "An act for amending the penal laws of this state," [he or she shall suffer death, as if the said act, or this act had not been made.]

SECT. XXXIII. *Be it enacted by the authority aforesaid,* That any such offenders who have been or shall be pardoned for the offences or crimes, of which he or she hath been or shall be convicted in pursuance of the said act, or of this act, provided such offence was by any law in force before the passing of the said act made capital, and who shall be convicted of a second offence of the like nature, shall suffer death on such conviction without benefit of clergy, and any constable who shall take up and convey to gaol any convict who shall escape from his confinement, shall be allowed mileage, at the same rate as constables are commonly allowed, to be paid by the Treasurer of the proper county.]

SECT. XXXIV. *Be it enacted by the authority aforesaid,* That any felon convicted in any county in this state, other than the county of Philadelphia, of any felony or felonies,* for which he or she shall be sentenced to hard labour for the space of twelve months or upwards, may, at the discretion of the court in which such felon shall be convicted, within three months after such conviction, be removed, at the expense of the said county, under safe and secure conduct, to the gaol in the said county of Philadelphia, and therein

1790. be confined, fed, cloathed, and employed at hard labour, as is herein before directed, for the remaining part of the time for which, by such sentence, he or she shall be liable to imprisonment; and the commissioners of the said county of Philadelphia, upon the application of the said Inspectors, shall have authority, from time to time, to draw orders upon the Treasurer of the county from which such felon shall have been so removed, for the expenses of feeding and cloathing such felon, if the labour of such felon shall not be sufficient to pay the same, which orders the Treasurer of such county shall accept and pay.

Penalty on
selling liquor
in the gaol,
except in
certain
cases,
[Repealed
by act of 4th
of April,
1807. (chap.
§205.)]

SECT. xxxv. *Be it enacted by the authority aforesaid,* That if any gaoler, or other person whatever, shall introduce into, or give away, barter or sell, within any gaol or house of correction in the said city, or any of the counties of this state, any spirituous or fermented liquors, excepting only such as the gaoler or keeper of such gaol or house of correction shall make use of in his own family, or such as may be required for any prisoner in a state of ill health, and for such purpose prescribed by an attending physician, and delivered into the hands of such physician, or other person appointed to receive them, such person shall forfeit and pay the sum of five pounds, to be recovered as debts of like value may be recovered by the laws of this state, one moiety thereof to the use of the person suing, the other moiety to be paid to the said Inspectors, for the purposes in this act contained.]

Repeal of
former penal
laws.

SECT. xxxvi. *Be it enacted by the authority aforesaid,* That the act, entitled "An Act for amending the penal laws of this state," and the act, entitled "An Act to amend an act, entitled "An Act for amending the penal laws of this state," shall be, and they are hereby, repealed.

Limitation
of this act.
(Now perpe-
tual.)

SECT. xxxvii. *Be it enacted by the authority aforesaid,* That this act shall be in force for the term of five years, and from thence to the end of the next session of the General Assembly, and no longer.]

Of convicts
sentenced
under the
former law.

SECT. xxxviii. *And be it further enacted by the authority aforesaid,* That the force and operation of the act herein before mentioned, entitled "An Act for amending the penal laws of this state," shall, notwithstanding the said act is herein repealed, remain valid and effectual, as to all persons convicted and sentenced to confinement, servitude and hard labour, conformably to the true intent and meaning of the said act, and of this act.

Passed 5th April, 1790.—Recorded in Law Book No. IV. page 105. (f)

(f) The object of this note is to exhibit the state of the criminal code of Pennsylvania, from the 5th of April, 1790, to the present time, in such a manner as to be understood by every reader, and to be useful to Grand Juries, in their chamber. For the great outline of the penal law, especially as it stood previous to the act in the text, the reader is referred to vol. 1. page 105, (chap. 236,) and the notes subjoined thereto.

The act in the text being limited to the end of the Session of the Legislature next following the termination of five years

after its passage; an act was passed on the 18th day of April 1795. (chap. 1850,) entitled "an act to continue in force the act, entitled "an act to reform the penal laws of this state, and for other purposes therein mentioned"—By this act, the Inspectors of the gaol of the city and county of Philadelphia, have full power and authority to provide necessaries for every description of persons, who may be confined in the said gaol, and to separate and class the different prisoners in such manner as they shall judge will best promote the object of their confinement.

§ 2. They have power to direct the cloathing for convicts, and to employ each in such kind of labour as their various circumstances may require; and so much of the thirteenth section of the act in the text, as directs the description of cloathing for the convicts, that their heads should be shaved, and that they should be kept at labour of the hardest and most servile kind, is repealed.

§ 3. That part of the twenty first section of the act in the text, which authorizes the Mayor of the city, on the certificate of two of the Inspectors, to order persons for offences committed in the gaol to be punished by whipping, or repeated whippings, not exceeding thirteen lashes each, or by close confinement, is repealed; and the said Inspectors may order and direct any convict, who shall commit either of the offences mentioned in the said twenty first section, to be confined in the cells, or dungeon, with bread and water, only, for sustenance, for any period not exceeding ten days for the first offence, nor fifteen days for any subsequent offence.

§ 4. The parts of the twenty second section of the act in the text, which authorizes the mayor and aldermen of the city, and two Justices of the county of Philadelphia, to appoint and to remove the keeper of the gaol, to fix the salary of the keeper, to approve of the appointment of deputies and assistants, and to ascertain their compensation, and so much thereof as empowers the mayor to draw for the salary and compensation, and to approve of the sureties offered by the Gaoler is repealed; and all the power and authority vested by the said twenty second section in the said Mayor, Aldermen and Justices, shall be exercised exclusively by the said Inspectors.

§ 5. So much of the twenty second section of the act in the text, as allows to the keeper of the gaol five *per centum* on the sales of all articles manufactured by the criminals, is also repealed.

§ 6. This act, and the act in the text declared to be, and continue in force for three years, and from thence to the end of the next session of the General Assembly, except such parts as were altered or supplied, or repealed by this, or any other act.

The people of *Pennsylvania* were satisfied with this system; and by an act, passed 4th of April 1799, (chap. 2040,) so much of the act in the text, as was continued by the act of 18th of April, 1795, and also the said continuing act, were made perpetual.

With respect to the appointment of Inspectors; by the 17th section of an act passed 23d of September, 1791, (chap. 1572,) it was made lawful for the Mayor

or and two Aldermen of the city, and two Justices of the county of Philadelphia, to appoint Inspectors of the prison of the city and county of *Philadelphia*. (See sect. 23d of the act in the text.)

The power of appointment, under this act, appears to have been abused, and appointments made under it, in a clandestine manner. The Mayor, in one instance, having selected two Aldermen, and two Justices, and refused to give notice to others of the hour and place of appointment, or to inform them of them, when called on for that purpose.—See the *Commonwealth, v. Douglas* and others, 1. Binney, 77.

By an act passed the 23d of February, 1809, entitled "an act giving additional powers to, and changing the mode of appointment of the Inspectors of the prison in *Philadelphia*, and for other purposes." The Inspectors of the prison, in addition to the powers they before possessed, shall have authority to choose out of their own body, a President, a Secretary, and a Treasurer. The Treasurer shall receive all monies belonging to the institution, and pay the same upon the orders of the Board, signed by the President, and attested by the Secretary; his accounts shall be settled every two weeks by the Board of Inspectors, who are authorized in the name of the President, to sue for, and recover possession, by ejectment or otherwise, vacant city lots, directed to be sold by the Inspectors, by act of 2d of April, 1803, (*infra*.) and also, in the same name, to sue for, and recover debts, due or hereafter to become due to the prison of the city and county of Philadelphia, as fully and effectually as any body corporate may or can do; and no suit so brought shall be discontinued or abated by any change of the said persons by the appointment of others in their stead; but the same shall continue and proceed to the final issue.

§ 2. The court of Quarter Sessions shall, at their March sessions, annually, appoint three discreet and suitable persons, as auditors, who shall, under oath or affirmation, audit and settle the accounts of the Inspectors of the prison, subject nevertheless to the revision herein after mentioned, stating at large the receipts and disbursements of all monies which may have been received and expended by them, and publish the same in two of the daily newspapers of the city.

§ 3. The Select and Common Councils of the city of *Philadelphia*, in joint meeting, annually on the first Monday in May, and on the first Monday in November, shall elect by ballot three Inspectors, on each of the said days, who shall be taxable inhabitants of the said city; and the commissioners of the township of the

1790. Northern Liberties, shall, annually, on each of the said days, elect, by ballot, two Inspectors, between the hours of two and five o'clock in the afternoon, who shall be taxable inhabitants of the township of the Northern Liberties; and the commissioners of the district of Southwark, shall, annually, on each of the said days, between the hours of two and five o'clock in the afternoon, elect, by ballot, two Inspectors, who shall be taxable inhabitants of the said district of Southwark; a majority of whom shall constitute a board of Inspectors for the prison of the city and county of *Philadelphia*.

§ 4. The treasurer shall give bond with sufficient surety, in the sum of ten thousand dollars, to the board of Inspectors, for the faithful performance of the duties of his office, to be sued for and recovered in the name of the Inspectors, on forfeiture thereof, to the use of the institution; and the said treasurer shall not be entitled to receive any compensation for his services.

§ 5. The Inspectors shall annually appoint three of their own body, whose especial duty it shall be to inspect the accounts of the institution, and who shall furnish, under oath or affirmation, to the first week in January, annually, to the commissioners of such counties as may have become indebted for convicts confined in the prison of *Philadelphia*, a correct account current, accurately designing the value and amount of the weekly expenses incurred for the maintenance of said prisoners; and that in their opinion the charges therein contained are just and equitable, and also of the weekly amount and value of the labour performed by them, which account shall be certified by the President of the board of Inspectors and attested by their clerk.

§ 6. Such part or parts of any law hereby altered and supplied, is and are hereby repealed.

It is necessary merely to notice here, that by an act passed 4th of April, 1792, (chap. 1625,) the Inspectors of the prison shall likewise be inspectors of the debtor's apartment, and shall attend at the debtor's apartment, at least once in each week, and shall examine into and inspect the management thereof, and the conduct of the keeper and his deputies, and shall make such orders and regulations, with regard to the well ordering and cleanliness of the said apartment, as shall be approved of by the Mayor of the said city, and the President of the court of Common-Pleas for the city and county of *Philadelphia*, (see sect. 26, of the act in the text.)

By an act passed the 2d of April, 1803, (chap. 2377,) which states in the preamble, that the public prison of *Philadelphia* was found too small for accommodating the

convicts from the different parts of the state, and the persons whom it may be necessary to imprison for offences committed in the city and county of *Philadelphia*, certain vacant city lots are directed to be sold by the Inspectors of the prison, or a majority of them; the proceeds of such sale to be appropriated to the erection of a new prison, or other house of confinement for the use of the said city and county, &c. and, it is *Provided*, that in consideration of the said lots being granted for the purposes aforesaid, the commonwealth reserves the right to the several counties within the same, to send their convicts to the present prison of the city and county of *Philadelphia*, &c.

§ 2. Immediately after the said prison shall be completed, and suitable for the admission of prisoners, the said Inspectors shall cause to be removed thereunto, all persons that may then be confined in the prison of the city and county of *Philadelphia*, under the denomination of prisoners for trial, vagrants, runaway or disorderly servants or apprentices, and all such other description of persons, (except convicts,) as have been heretofore confined in the county prison, and to receive into the said new prison, all persons of the aforesaid description that may hereafter be legally committed.

By an act entitled "a supplement to sundry penal laws of this commonwealth," passed 21st of March, 1806, (chap. 2687,) the court before which any person shall be convicted of felony or larceny, and sentenced to undergo an imprisonment at hard labour and confinement, for any term not exceeding three years, shall be vested with a discretionary power of directing the imprisonment, labour and confinement aforesaid, to be had and performed in the jail of any county, within this commonwealth, or in the jail and penitentiary of *Philadelphia*.

By an act entitled "a further supplement to the penal laws of this state, passed 4th of April, 1807, (chap. 2805,) sect. 2. any person convicted in any county of this state; other than the county of *Philadelphia*, of any of the offences alluded to in the 4th section of the act in the text, for which he or she shall be sentenced to hard labour for the space of two years or upwards, may, at the discretion of the court, in which such person shall be convicted, within three months after such conviction, be removed to the gaol in the county of *Philadelphia*, therein to be confined, fed, clothed and employed at hard labour, according to law, for the remaining part of the time for which, by such sentence, he or she shall be liable to imprisonment.

§ 4. If any gaoler shall neglect or refuse to give notice, or furnish a complete calendar or list of all persons committed under

sentence of servitude, to the commissioners of the proper county as is directed by the 30th section of the act in the text, if the courts of Quarter Sessions shall have ordered the gaoler so to do, he shall forfeit and pay for every such neglect or refusal, the sum of one hundred dollars; and if the said commissioners of any county, after the receipt of such notice or calendar, shall neglect or refuse to procure sufficient articles and materials of labour and manufacture, or otherwise neglect the duties enjoined upon them by the said 30th section, such commissioners, or any of them, so neglecting or refusing, shall forfeit and pay the sum of one hundred dollars, for every such neglect or refusal; and if by the report of the commissioners of any county to the court of Quarter Sessions, it shall appear that there is not sufficient room or conveniences in and about the common gaol of any county for the employment and punishment of the convicts, as is directed by the said section, it shall be the duty of such commissioners, with the consent and approbation of the court and Grand Jury of the proper county, to cause to be erected such additional buildings as may be necessary for that purpose, and, if need be, to purchase ground proper and convenient for the erection of such additional buildings, at the expense of the proper county.

§ 5. If any gaoler shall sell or suffer to be sold to the prisoners, or other persons, any spirituous liquors, or shall suffer any spirituous liquors under any pretence whatever, except in cases of sickness, to be given to any of the said prisoners in any quantity or measure, such gaoler so offending, upon conviction thereof, shall forfeit and pay the sum of fifty dollars for every such offence, and shall be moreover removed from being keeper of such gaol or prison; and it shall be the duty of the court of the proper county to examine into the conduct of the gaoler in this respect, at each court of Quarter Sessions, and if necessary, to send for and examine witnesses in this behalf.

§ 6. If any gaoler shall be convicted of having by his negligence, suffered any prisoner committed to his custody to escape, he shall forfeit and pay for every such offence, a sum not exceeding three hundred dollars.

§ 7. All the penalties inflicted by this act, shall be recovered upon conviction for the offence, in the court of Quarter Sessions of the proper county, by indictment or information.

§ 8. The 35th section of the act in the text, repealed.

By the 18th sect. of the act of 23d September, 1791, (chap. 1572,) the prison Inspectors shall have power with the ap-

probation of the Mayor, two Aldermen of the city, and two Judges of the Supreme Court, or two of the Judges of the court of Common Pleas of Philadelphia county, to make rules and regulations for the government of all convicts confined in the said prison, not inconsistent with the laws and constitution of this commonwealth, and to prescribe their allowance of provisions, ascertaining the quantity by weight and measure, and not by piece. (see sect. 25, of the act in the text.)

In pursuance of this power, the following rules and regulations have been adopted.

Regulations for the government of the debtor's prison of the city and county of Philadelphia.

1. That the division of the debtor's apartment, which is now restored to its former state, shall be constantly preserved, that is, that the south part of the house shall be for the use of the Keeper, his family, and Assistants, and that part of the house north of the division wall, shall be allotted for the use of the prisoners.

2. That the house be washed, once or twice a week during the warm weather, and at least once in two weeks, or oftener if the weather permit during winter, and the walls shall be white-washed as often as shall be deemed needful for the health of the prisoners.

3. That the women prisoners shall continue to be kept separate from the men, and at all times the most rigid prohibition of any kind of intercourse between them and the men prisoners be continued, and no men shall be admitted to their apartment, excepting the Keeper, his Assistants, the Inspectors, or a Physician; in case of any of the women being sick.

4. No woman shall be permitted to go into any room where the men are prisoners, excepting the mother or wife of one of the prisoners, and not more than one such mother or wife at a time, unless in case of the sickness of a prisoner, and the Physician orders a Nurse.

5. No game of address or hazard of any kind whatsoever, shall be permitted in the prison on any account; nor shall any implements of gaming be suffered to be in the prison at all.

6. No kind of Wines, spirituous liquors, porter, strong beer, nor cyder, nor any kind of drink stronger than small beer shall be permitted to the prisoners, in any quantity whatever, and the price charged to the prisoners for such small beer, &c. shall not exceed six cents per quart, excepting from this rule what a physician shall prescribe for any prisoner in case of such prisoner being sick, and

(*See the end of the note for preceeding rules and regulations.)

1790.

then only the kind and quantity shall be admitted which is prescribed for the sick prisoner.

7. No charge of money, or any equivalent for money under the name of *Garnish*, or any charge of the kind shall be suffered to be made in the prison, on account of any person lodging in any of the rooms allotted for the prisoners.

8. No prisoner shall be suffered to come without the inner gate, unless called by the Keeper, or his Assistants, or an Inspector.

9. It shall be the duty of the keeper and his assistants, to see that no female remains in the rooms where the men are prisoners, after sunset. Also to examine every visitor, and see that no kind of liquor or drink prohibited by these rules, be brought into the prison.

10. No visitor shall be permitted to come in, or remain in the prison after sunset. And if any person shall attempt to introduce into the prison, any kind of liquor or drink prohibited by these rules, such liquor or drink shall be immediately destroyed, and the person who endeavoured to bring it in, shall be instantly turned out of doors, and never suffered to come in again as a visitor.

11. That no visitor shall be admitted to the prison on the first day of the week, called the Sabbath day, unless to visit a prisoner who is sick.

12. If any prisoner behave in a disorderly manner, and on being reprimanded by the keeper or his assistant, or an inspector, does not immediately conduct himself or herself in a proper and respectful manner, such prisoner shall be confined separately from the rest, in a room appropriated for that purpose.

By order of the Board of Inspectors, &c.

Signed and approved as directed by law, Jan'y, 15th—18th, 1808.

Additional regulations for the Prison of the city and county of Philadelphia,

1st. No men shall be permitted to visit the women's apartments, unless in the company of one or more of the Inspectors of the Prison; and no women shall be permitted to visit any other part of the Prison than the women's apartments, unless it be such as desire to meet with the prisoners in the meeting-house on the first day of the week, for the purpose of communicating religious instruction.

2d. Such of the convicts as conduct themselves properly, and are diligent in their work, and such only, may be permitted to be visited by their Husbands or Wives, Parents or Children, once in three months, by orders signed by the two visiting inspectors.

3d. In all visits to prisoners by permis-

sion of the visiting Inspectors, the wooden grated door shall be shut; and all conversation with the prisoners shall be through both the grates, a keeper to be in the entry to hear all that passes in such interviews, and the interview shall not be longer than fifteen minutes.

4th. The design of the Inspectors introducing persons to view the interior of the prison, being chiefly for strangers whose object may be to introduce similar institutions elsewhere, or to improve them where already established; the Inspectors will endeavour to discourage any persons from going to view the prison, merely to gratify *idle curiosity*, as it has a bad effect on the prisoners.

5th. A separate table shall be kept, where the lazy prisoners who do not perform their proportion of work when able, shall be fed agreeably to the principle of the 25th rule established February, 26th 1792, with this difference, that such lazy prisoners shall have no animal food at all, till an amendment in their conduct has taken place.

By order of the Board of Inspectors, &c.

Signed and approved as directed by law, 26th of March, 1808.

Having thus exhibited a connected view of all the laws relating to the prison, and the duties of the officers entrusted with the cure and management of it; we shall proceed to consider the laws enacted since the act in the text on the important subject of crimes and punishments.

By an act, entitled "a supplement to the penal laws of this state," passed 23d of September, 1791, (chap. 1572,) if any person who hath been, or shall be legally indicted, in any court of criminal jurisdiction within this commonwealth, of treason, felony of death, robbery, burglary, sodomy or buggery, or as accessories before the fact to any of the same offences, did not, or will not appear to answer to such indictment, or, having appeared, shall escape before trial, and the same indictment, record and proceedings, shall be removed by writ of *certiorari* into the Supreme Court of this commonwealth, it shall and may be lawful for the same court to award a writ of *captas*, directed to the Sheriff of the county where the fact shall be charged to have been committed; and if the party indicted shall be supposed by the indictment to inhabit, or be conversant in, any other county, then also to the Sheriff of such county; which writ or writs shall be delivered to the said sheriff, or sheriffs, at least two months before the day of the return thereof, commanding the said sheriff or sheriffs to take the person so indicted as aforesaid, if he or she may be found in his or their Balliwicks, and him or her safely keep, so that he may have his or

her body before the Justices of the said Supreme Court, at the next Supreme Court, to be holden for the said commonwealth, to answer to the said indictment, or prosecute his or her traverse thereupon, as the case may be, and to be further dealt with as the law shall direct; and if the same Sheriff or Sheriffs shall make return to the same writ or writs of *capias*, that the person indicted as aforesaid cannot be found in his Bailwick, then, after such return, a second writ of *capias* may issue out of the said Supreme court, and be delivered, at least three months before the return day thereof, to the Sheriff of the county where the fact shall be charged to have been committed; and in case the party shall be supposed by the indictment to inhabit, or be conversant in any other county, then another writ of *capias* shall also issue, and be delivered, at least three months before the return day thereof, to the Sheriff of such county; which writ or writs of *capias* shall be returnable before the Justices of the same court, on the first day of the second term next after the *teste* of the said second writ of *capias*, so that a term shall intervene between the *teste* and return days of the same writ or writs, whereby the said Sheriff or Sheriffs shall be commanded to take the said person, so indicted as aforesaid, if he or she may be found in his or their Bailwicks, and him or her safely keep, so that he may have his or her body before the Justices of the said Supreme Court, at the day of the return thereof, to answer or prosecute his or her traverse as aforesaid; but if he or she cannot be found in his or their Bailwicks, then to cause public proclamation to be made on three several days in one of the courts of Quarter Sessions of the peace to be held for the said counties, respectively, between the *teste* and return days of the same writ or writs, that the party so indicted shall appear before the said Justices of the said Supreme Court, at a Supreme Court to be holden at the time and place contained in the same writs, to answer such indictment, or prosecute his or her traverse thereof, as the case may be, or through default thereof, he or she will, at the return of the same writ or writs be outlawed and attainted of the crime whereof he or she was indicted as aforesaid; and the said second writ of *capias*, directed to the Sheriff of the county where the crime hath been, or shall be charged to have been committed, shall contain a further clause, commanding the same Sheriff, in case the person indicted as aforesaid, cannot be found in his bailwick, to cause public advertisement to be made in one or more of the public newspapers of this state, once a week, in six succeeding weeks between the *teste* and return of the said second writ of *capias*,

specifying therein the coming of the said second writ of *capias* to his hands, with the *teste* thereof, and the time and place of return to be made thereof, naming the person indicted as aforesaid, with his or her addition of degree, mystery and place of abode, as contained in the writ, stating the nature of the offence charged against him or her, and commanding him or her to appear before the Justices of the said Supreme Court, at the day and place directed by the said second writ of *capias*, to answer to the said indictment, or prosecute his or her traverse thereof, as the case may be, or, through default thereof, at the return of the said second writ of *capias*, he or she will be outlawed and attainted of the crime whereof he or she shall have been indicted as aforesaid; and if upon the return of the same writ or writs last mentioned by the said Sheriff or Sheriffs, that the directions of the said writ or writs had been fully complied with and pursued, and the person indicted as aforesaid, shall not yield himself or herself to one of the said Sheriffs, so that he may have his or her body before the Justices of the said Supreme Court, at the day and place as directed by the said writ or writs, or, having surrendered himself or herself, shall escape from his custody, or having been bailed on his or her surrender or caption, shall not appear, so that, through want of his or her appearance at the time and place the said Supreme court shall appoint for his or her trial, no trial of his or her offence can be had, the Justices of the said Supreme Court shall, in either of these cases, pronounce and declare the said person indicted as aforesaid, and not appearing at the time and place appointed for his or her trial as aforesaid, to be outlawed, and attainted of the crime whereof he or she shall have been indicted as aforesaid, the same Supreme Court taking care to pronounce and declare the judgment of outlawry against the principal offender, previously to the declaration of outlawry against the accessory, against whom, in all other respects, it shall be lawful to carry on the proceedings together; and at the same time the said Supreme Court shall declare the legal punishment for the same crime: and wherever imprisonment shall be part of the sentence for any of the said offences, the term thereof shall commence from the time the person outlawed shall, subsequent to his or her outlawry, actually be in the custody of the Sheriff of the county where the offence was, or shall be committed, which sentence shall be fully and particularly entered upon the records of the Supreme Court; and the said sentence of outlawry shall have the legal effect of a judgment upon verdict or confession, against the person so outlawed, for the offence whereupon he or she shall

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have been outlawed, unless and until the same outlawry shall be afterwards avoided by the judgment of the same court, on plea pleaded in the nature of a writ of error.

§ 2. When any person outlawed as aforesaid, shall be taken, either by *capias utlagatum*, or otherwise, or being in the sheriff's custody, shall be brought to the bar of the Supreme Court, the court shall, upon the suggestion and prayer of the Attorney-General, award execution to be done upon him or her, unless the prisoner shall plead, either *cor tenus*, or in writing as his or her counsel shall advise, that he or she was not the person who was outlawed, or shall assign errors in fact, or in law, sufficient to prevent the award of execution; in which case the court shall proceed to determine the same, either by an inquest, or by their own judgment, agreeably to law, and the prisoner shall by such plea have all the benefit and advantage of all legal matters in his or her favour, as if he or she had brought a writ of error, and had assigned the several matters pleaded, as errors. *Provided*, That if any person outlawed, shall, within the space of one year next after the outlawry pronounced against him or her, yield himself or herself to one of the Justices of the Supreme Court, and offer to traverse the indictment whereon the said outlawry shall be pronounced as aforesaid that then he or she shall be received to the same traverse, and being thereupon found not guilty, by the verdict of a jury, of the offence for which he or she shall be clearly acquitted and discharged of the said outlawry, and of all penalties and forfeitures by reason of the same, as fully as if no such outlawry had been had.

§ 3. All the costs and charges of the proceedings to outlawry, shall be borne and paid by the county, where the crime is laid to have been committed; *Provided*, That if the person or persons so outlawed, shall have real or personal estate, the same, or so much thereof as shall be necessary, shall be sold, by warrant from the commissioners of the said county, and the nett proceeds of such sales shall be applied to the payment of the said costs and charges, or so far as the same shall extend, in exoneration of the county. (See vol. 1, page 116, and *Republica v. Doan*, 1 Dal. 18, 26.) [It may not be improper here to observe, that the late changes in the judiciary system, and the abolition of the courts of *Justiæ*, *Pleas*, and *Circuit Courts* in the counties, may render outlawries impracticable out of the city

and county of Philadelphia; and some legislative interference may be necessary to remove doubts, or to vest the county courts with the powers given by this act only to the Judges of the Supreme Court.]

§ 4. Repeals the act against conjuration, witchcraft, and dealing with evil and wicked spirits, 1, Jac. 1, C. 12, (see vol. 1, page 114.)

§ 5. If any prisoner shall, upon his or her arraignment for any capital or inferior offence, stand mute, or not answer directly, or shall peremptorily challenge above the number of persons summoned as jurors for his or her trial, to which he or she is by law intitled, the plea of not guilty shall be entered for him or her on the record, the supernumerary challenges shall be disregarded, and the trial shall proceed in the same manner, as if he or she had put himself or herself upon the county, any law, custom, or usage to the contrary thereof in anywise notwithstanding. (See vol. 1 page 112.)

§ 6. Whereas it sometimes happens that bastard children, begotten out of the state, are born within the state, and others begotten within one of the counties of the state, are born in another county, and difficulties have arisen about the place of trial; and it is reasonable and just that the reputed fathers of bastard children should be at the expense of their maintenance. It is enacted, that in the latter case, the prosecution of the reputed father shall be in the county where the bastard child shall be born, and the like sentence shall be passed, as if the bastard child had been, or shall have been begotten within the same county; and in the former case, to wit, of a bastard child begotten out of the state, and born within the state, the like sentence shall be passed, except in the imposition of a fine or corporal punishment, in lieu thereof, which part of the sentence shall be omitted. (See vol. 1, page 27.)

§ 7. So much of the act against adultery and fornication, as declares that whipping, imprisonment at hard labour, or branding, shall or may be a part of the sentence, on conviction of adultery, is repealed; and in all cases of conviction for adultery, a fine not exceeding fifty pounds shall be imposed, and in addition thereto, the offender shall be imprisoned for any time not exceeding twelve, nor less than three months (See vol. 1, page 27.)

§ 8 In all cases of felony of death, robbery and burglary, it shall and may be lawful to punish the receivers of such felons, robbers and burglars,

by fine and imprisonment, although the principal felon, robber or burglar, cannot be taken, so as to be prosecuted and tried for said offences, which conviction, and sentence of the said receivers, shall exempt them from being prosecuted as accessaries after the fact, in case the principal felon, robber or burglar, shall be afterwards taken and convicted. (See vol. 1, page 115. 116, 119, 273: and see also the 4th section of the act in the text.)

§ 9. Whenever any person or persons shall be convicted of robbery or burglary, such person or persons shall be ordered to restore to the lawful owner or owners the goods and chattels so stolen, or to pay to him, her or them, the full value thereof, or so much thereof as shall not be restored, and the forfeiture of his, her or their lands and chattels, shall only extend to the residue thereof, after such restitution made as aforesaid: and the owner or owners of goods and chattels, stolen as aforesaid, shall have like remedy for restitution, by executions issued by the court, in which the attainders shall be had, as is provided by an act of Assembly in the case of conviction of larceny, entitled "An act for the advancement of justice, and more certain administration thereof." (See vol. 1, page 122.) But such felons, unable to make restitution, may be discharged as insolvent debtors, by the court by which he was committed, by act of 28th of February, 1787, (chap. 1250, ante. page 346.) And by act of 27th of March, 1790, (chap. 1485, ante. page 522.) the court is empowered to direct additional labour, in commutation of the restitution. And as to the forfeiture, see the 19th section of the 9th article of the existing constitution.)

§ 10. When any person shall be accused before a magistrate, upon oath or affirmation, of any of the said crimes, and the said magistrate shall have issued his warrant to apprehend such person or persons, or to search for such goods as have been described on oath or affirmation to have been stolen, if any goods shall be found in the custody or possession of such person or persons, or in the custody or possession of any other person or persons, for his, her or their use, and there is probable cause, supported by oath or affirmation, to suspect that other goods which may be discovered on such search, are stolen, it shall and may be lawful for the said magistrate to direct the said goods to be seized, and to secure the same in his own custody, unless the person in whose possession the same were found, shall give sufficient surety to produce

the same at the time of his or her trial; and the said magistrate shall forthwith cause an inventory to be taken of the said goods, and shall file the same with the clerk of that court in which the accused person is intended to be prosecuted, and shall give public notice in the newspapers, or otherwise by advertising the same in three or more public places in the city or county where the offence is charged to have been committed, before the time of trial, noting, in such advertisement, the said inventory, the person charged, and time of trial; and if on such trial the accused party shall be acquitted, and no other claimant shall appear, or suit be commenced, then, at the expiration of three months, such goods shall be delivered to the party accused, and he, she or they shall be discharged, and the county be liable to the costs of prosecution; but if he or she be convicted of larceny only, and, after restitution made to the owner, and the sentence of the court being fully complied with, shall claim a right in the residue of the said goods, and no other owner shall appear or claim the said goods, or any part of them, that then it shall be lawful, notwithstanding the claim of the said party accused, to detain such goods for the term of nine months, to the end that all persons having any claim thereto may have full opportunity to come, and, to the satisfaction of the court, prove their property in them, on which proof the said owner or owners, respectively, shall receive the said goods, or the value thereof, if, from their perishable nature, it shall have been found necessary to make sale thereof, upon paying the reasonable charges incurred by the securing the said goods, and establishing their property in the same; but if no such claim shall be brought, and duly supported, then the person so convicted shall be entitled to the remainder of the said goods, or the value thereof, in case the same shall have been sold, agreeably to the original inventory; but if upon an attainer of burglary or robbery, the court shall, after due enquiry, be of opinion the said goods were not the property of such burglar or robber, they shall be delivered, together with a certified copy of the said inventory, to the commissioners of the county, who shall endorse a receipt therefor on the original inventory, register the said inventory in a book, and also cause the same to be publicly advertised, giving notice to all persons claiming the said goods to prove their property therein to the said commissioners, and unless such

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proof shall be made within three months from the date of such advertisement, the said goods shall be publicly sold, and the neat monies arising from such sale shall be paid into the county treasury, for the use of the commonwealth. *Provided*, That if any claimant shall appear within one year, and prove his or her property in the said goods to the satisfaction of the commissioners, or, in the case of dispute, shall obtain the verdict of a jury in favour of such claim, the said claimant shall be entitled to recover and receive from the said commissioners or treasurer, the neat amount of the monies paid as aforesaid, into the hands of the said commissioners, or by them paid into the treasury of this commonwealth.

§ 11. The costs accruing on all bills returned *ignoramus* by the grand jury of the city, or any county in this commonwealth, shall be paid out of the county stock, by the city or county in which the prosecution commenced, and not by the party charged, before such grand jury, with any felony, breach of the peace, or other indictable offence. (But by an act passed 7th of December, 1804, chap. 2513, in all prosecutions, cases of felony only excepted, if the bill or bills of indictment shall be returned "*ignoramus*," the grand jury who returns the same shall decide and certify on such bill, whether the county or the prosecutor shall pay the costs of prosecution; and the court in which the determination shall be made, shall forthwith pass sentence to that effect, and order him, her or them committed to the gaol of the county until the costs are paid, unless he, she or they give security to pay the same in ten days. This provision is made perpetual by an act passed 29th of March, 1809.)

§ 12. Every person and persons, who is, are or shall be held in confinement by order or judgment of any court of this commonwealth, for the costs of prosecution, shall be intitled to the benefit of the several acts of Assembly of this commonwealth for the relief of insolvent debtors, and may be discharged from personal imprisonment by the court in which such prosecution was or may be had, so far as regards confinement of their bodies for said costs, if such court shall, on consideration of the circumstances of such person or persons, finding that he, she or they shall be unable to discharge the said costs of prosecution; provided that the like previous notices of such application for discharge from confinement be given to the several persons interested in the said costs, as the law requires

where insolvent debtors in other cases apply for such discharge.

§ 13. Where any person shall be brought before a court, justice of the peace, or other magistrate, of any city or county in this commonwealth, having jurisdiction in the case, on the charge of being a runaway slave, or of having committed a crime, and such charge upon examination, shall appear to be unfounded, no cost shall be paid by such innocent person, but the same shall be chargeable to, and paid out of the county stock, by such city or county.

§ 14. The expenses of the removal of prisoners from one county to another, for trial, shall be borne and paid by the county, to which he, she or they shall be thus removed for trial; and wherever by order of the Governor, or one of the Judges of the Supreme Court, any person charged with having committed an offence in one county, shall be removed into another county for safe custody, or shall be transported from another state into this state for trial, the expenses of such removals, or transportations, shall be paid by the State Treasurer, on the order of the Governor, and the subsequent expenses shall be at the charge of the county where the fact is supposed to have been committed. (By the third section of the supplement of 4th of April, 1807, (chap. 2365.) Where any person charged with having committed a felony, in the city of Philadelphia, or in any county in this state, shall go, or escape into any other county of this state, or into the city aforesaid, it shall and may be lawful for the President or any Judge of the court of Common Pleas in the county where the said person may be found, to issue his warrant, authorizing and requiring the Sheriff of the said county to take the said person, and conduct him or her to the proper city or county where the said felony is alleged to have been committed, the expenses of which shall be paid to the said Sheriff by the county or city to which the said person is conducted.—And—By the second section of the fourth article of the constitution of the United States, "a person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime." And the manner in which such fugitives from justice are to be apprehended, secured, and delivered over, is prescribed by an act of Congress passed February 12th, 1793.)

§ 15. In all cases where any person hath been, since the passing of the act in the text, or shall be convicted of any offence or offences, which shall be punishable capitally, or by imprisonment at hard labour, the county where the crime hath been or shall be committed shall pay the costs of prosecution, if the defendant hath not property sufficient to discharge the same; but where the same person hath been, or shall be convicted of divers offences at the same term or sessions, the costs of prosecution on one of the indictments only, shall be paid out of the county stock.

§ 16. Repeals any former acts of Assembly, and all other parts of the criminal law of the state, and forms of proceedings relative thereto, so far as this act has altered or supplied the same. *Provided*, That all prosecutions, convictions, attainders and outlawries, or other proceedings heretofore duly and legally had or made, or which may be had or made under the former laws of this state, during the existence thereof, shall have the like force or effect, as if this act had not been made; and that in all cases, where by this act any new punishment is declared for any offence, that the said former acts of assembly, and all other parts of the criminal law, shall remain and continue in force, with respect to all such offences as have been committed before the passing of this act.

§ 17 & 18 Respecting the appointment, and powers of the Inspectors of the prison, have been already stated.—

The criminal law has undergone considerable and important changes by an act, entitled “An Act for the better preventing of crimes, and for abolishing the punishment of death in certain cases,” passed the 22d of April, 1794, (chap. 1766.) By this act it is enacted that no crime whatsoever, hereafter committed (except murder of the first degree) shall be punished with death in the state of Pennsylvania.

§ 2. All murder, which shall be perpetrated by means of poison, or by lying in wait, or by any other kind of wilful, deliberate and premeditated killing, or which shall be committed in the perpetration or attempt to perpetrate any arson, rape, robbery, or burglary, shall be deemed murder of the first degree; and all other kinds of murder shall be deemed murder in the second degree; and the jury, before whom any person indicted for murder shall be tried, shall, if they find such person guilty thereof, ascertain in their verdict, whether it be murder of the first or second degree;

but if such person shall be convicted by confession, the court shall proceed, by examination of witnesses to determine the degree of the crime, and to give sentence accordingly.

§ 3. Every person liable to be prosecuted for petit treason shall in future be indicted, proceeded against, and punished, as is directed in other kinds of murder. (See vol. 1, pa. 111.)

§ 4. Every person duly convicted of the crime of high treason shall be sentenced to undergo a confinement in the gaol and penitentiary-house of Philadelphia, for a period not less than six nor more than twelve years, and shall be kept therein at hard labour, or in solitude, and shall in all things be treated and dealt with as is prescribed by an act, entitled, “An act to reform the penal laws of this state,” or by the provisions of this act; that every person duly convicted of the crime of arson, or as being an accessory thereto, shall be sentenced to undergo a similar confinement, for a period not less than five nor more than twelve years, under the same conditions as are herein expressed in the first clause of this section; that every person duly convicted of the crime of rape, or as being accessory thereto before the act, shall be sentenced to undergo a similar confinement, for a period of time not less than ten years, nor more than twenty-one years, under the same conditions as are herein expressed in the first clause of this section; that every person duly convicted of the crime of murder, of the second degree, shall be sentenced to undergo a similar confinement, for a period not less than five years, nor more than eighteen years, under the same conditions as are herein expressed in the first clause of this section. (See vol. 1, pa. 111, 435, 451, 499.)

§ 5. Every person who shall be convicted of having, after the passing of this act, falsely forged and counterfeited any gold or silver coin, which now is or hereafter shall be passing or in circulation within this state, or of having falsely uttered, paid, or tendered in payment, any such counterfeit and forged coin, knowing the same to be forged and counterfeited, or having aided, abetted, or commanded the perpetration of either of the said crimes, or shall be concerned in printing, signing, or passing any counterfeit notes of the Banks of Pennsylvania, North America, or the United States, knowing them to be such, or altering any genuine notes of any of the said banks shall be sentenced to undergo a confinement in the gaol and penitentiary-house aforesaid for any

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§ 6. Whosoever, on purpose and of malice aforethought, by laying in wait, shall unlawfully cut out or disable the tongue, put out an eye, slit the nose, cut off the nose, ear or lip, or cut off or disable any limb or member of another, with intention in so doing to maim or disfigure such person, or shall voluntarily, maliciously, and of purpose, pull or put out an eye, while fighting, or otherwise, every such offender, his or her aiders, abettors and counsellors, shall be sentenced to undergo a confinement in the gaol and penitentiary house aforesaid for any time, not less than two, nor more than ten years, and shall be kept, treated and dealt with in manner aforesaid; and shall also pay a fine not exceeding one thousand dollars, three fourth parts whereof shall be for the use of the party grieved. (See vol. 1, pa. 114.)

§ 7. Whosoever shall be convicted of any voluntary man-slaughter, hereafter committed, shall be sentenced to undergo an imprisonment, at hard labour and solitary confinement, in the gaol and penitentiary-house of Philadelphia, for any time not less than two, nor more than ten years, and to give security for his or her good behaviour during life, or for any less time, according to the nature and enormity of the offence; and for the second offence shall be sentenced to undergo an imprisonment at hard labour and solitary confinement, in the gaol and penitentiary-house aforesaid, for any time not less than six, nor more than fourteen years.

§ 8. Whosoever any person shall be charged with involuntary man-slaughter, happening in consequence of an unlawful act, it shall and may be lawful for the Attorney-General, or other person prosecuting the pleas of the commonwealth, with the leave of the court, to waive the felony, and to proceed against and charge such person with a misdemeanor, and to give in evidence any act or acts of man-slaughter; and such person or persons, on conviction shall be fined or imprisoned, as in cases of misdemeanor; or the said Attorney-General or other person prosecuting the pleas of the commonwealth, may charge both offences in the same

indictment, in which case the jury may acquit the party of one, and find him or her guilty of the other charge.

§ 9. All claims to dispensation from punishment by benefit of clergy, or benefit of the act of Assembly, entitled, "An act for the advancement of justice, and more certain administration thereof," shall be and hereby are forever abolished; and every person convicted of any felony, heretofore deemed clergyable, shall undergo an imprisonment at hard labour and solitary confinement, in the gaol and penitentiary-house aforesaid, for any time not less than six months, and not more than two years, and shall be treated and dealt with as is directed in the act to reform the penal laws of this state except in those cases where some other specific penalty is prescribed by the act aforesaid to reform the penal laws of this state, or by this act. (See vol. 1, pa. 117.)

§ 10. Every person convicted in any county in this state, other than Philadelphia county of any crime (except murder of the first degree) which now is, or on the fifteenth day of September, one thousand seven hundred and eighty-six, was capital, or a felony of death, without benefit of clergy, or of knowingly uttering counterfeit coin, or of being concerned in printing, signing, or passing any counterfeit notes of the Banks of Pennsylvania, North America or of the United States, knowing them to be such, or of altering any of the genuine notes of either of the said banks, shall as soon as possible, be safely removed and conveyed by the Sheriff, and at the expense of the commonwealth, to the gaol and penitentiary-house aforesaid, and therein be kept during the term of their confinement, in the manner and on the terms mentioned in the thirty-fourth section of the act, entitled "An act to reform the penal laws of this state;" and every Sheriff, who shall neglect to remove and safely deliver at the gaol aforesaid such convict, within forty days after sentence is pronounced on the said convict, shall forfeit and pay the sum of one hundred dollars, to be recovered in any court of justice, and applied, one half to the use of the county in which the offence was committed, the other to such person as shall sue for the same.

§ 11. Every person convicted of any of the crimes last aforesaid and who shall be confined in the gaol and penitentiary-house aforesaid, shall be placed and kept in the solitary cells thereof, on low and coarse diet, for such part or portion of the term of his or her im-

prisonment, as the court in their sentence shall direct and appoint: *Provided*, That it be not more than one half, nor less than one twelfth part thereof: and that the Inspectors of the said gaol shall have power to direct the infliction of the said solitary confinement at such intervals, and in such manner, as they shall judge best.

§ 12. *Whereas*, It is of importance that the nature of the offence, and the former conduct and character of the convict, should be known by the said Inspectors, and their successors in office: *Be it enacted, &c.* That whensoever any person shall be convicted of any crime, which, on the said fifteenth day of September, one thousand seven hundred and eighty-six was capital, or a felony of death, or shall be removed from any county to the gaol and penitentiary-house aforesaid, the court, before whom such conviction is had, shall, within forty days after such offender is removed from the said county, make, and cause to be transmitted to the said Inspectors, a report or short account of the circumstances attending the crime committed by such convict, particularly such as tend to aggravate or extenuate the same, and also what character the said convict appeared on the trial to sustain, and whether he had at any time before been convicted of any felony or other infamous crime; which report the said Inspectors shall cause to be entered in books or registers, to be provided for that purpose.

§ 13. If any person convicted of any crime, which, on the said fifteenth day of September, one thousand seven hundred and eighty-six, was capital, or a felony of death, without benefit of clergy, shall commit any such offence a second time and be thereof legally convicted, he or she shall be sentenced to undergo an imprisonment in the said gaol and penitentiary-house, at hard labour, during life, and shall be confined in the said solitary cells at such times, and in such manner, as the Inspectors shall direct; and if any person sentenced to hard labour and solitary confinement, by virtue of this or any former act, shall escape, or be pardoned, and after his or her escape or pardon shall be guilty of any such offence, as on the said fifteenth day of September, one thousand seven hundred and eighty-six, was capital, or a felony of death, without benefit of clergy, such person shall be sentenced to undergo an imprisonment for the term of twenty-five years, and shall be confined in the solitary cells aforesaid, at the discretion of the said Inspectors. [See

the 22d and 23d sections of the act in the text.]

§ 14. If any person shall hereafter be convicted of any crime committed before the passing of this act, he or she shall be sentenced to undergo such pains and punishment as by the laws now in force are prescribed and directed, unless such convict shall openly pray the court, before whom such conviction shall be had, that sentence may be pronounced agreeably to the provisions of this act for the like offence, in which case, the said court shall comply with the said prayer, and pass such sentence on such convict, as they would have passed had the said offence been committed subsequent to the passing of this act.

§ 15. Every person convicted of murder, of the first degree, his or her aiders, abettors and counsellors, shall suffer death by hanging by the neck.

§ 16. No person indicted for any crime, the punishment whereof is altered by this act, shall lose any peremptory challenge, to which he or she would have been entitled, had this act not been passed; nor be liable to be tried before any court other than the Supreme Court or Court of Oyer and Terminer in the county where the fact was committed. [See section 2 of the act in the text.]

§ 17. If any woman shall endeavour privately, either by herself, or the procurement of others, to conceal the death of any issue of her body, male or female, which, if it were born alive, would by the law be a bastard, so that it may not come to light whether it was born dead or alive, or whether it were murdered or not, every such mother, being convicted thereof, shall suffer imprisonment at hard labour in the county gaol of the county where the fact was committed, or in the gaol and penitentiary-house aforesaid, for any time not exceeding five years; or shall be fined and imprisoned, at the discretion of the court, according to the nature of the case; and if the Grand Jury shall in the same indictment charge any woman with the murder of her bastard child, as well as with the offence aforesaid, the jury, by whom such woman shall be tried, may either acquit or convict her of both offences, or find her guilty of one, and acquit her of the other, as the case may be. [See vol. 1, pa. 113, and section 6 of the act in the text.]

§ 18. The concealment of the death of any such child shall not be conclusive evidence to convict the party indicted of the murder of her child, unless the circumstances attending it be

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such as shall satisfy the mind of the jury, that she did wilfully and maliciously destroy and take away the life of such child. [See vol. 1, pa. 113, and section 6 of the act in the text.]

§ 19. The several acts of Assembly of this commonwealth, and such parts thereof, so far as the same are repugnant to or supplied by this act, and no further, shall be, and hereby are, repealed.

By a supplement to the penal laws, passed 20th of March, 1797, (chap. 1918,) all costs accruing on all bills of indictment found by the grand jury of the city, or any county in this commonwealth, charging a party with any felony, breach of the peace, or other indictable offence, shall, if such party be acquitted by a petit jury, on the traverse of the same, be paid out of the county stock, by the city or county in which the prosecution commenced. (But, by an act passed 7th of December, 1804, in all cases of acquittals, by the *petit* jury, on indictments, cases of felony only excepted, the jury trying the same shall determine by their verdict whether the county, or the prosecutor, or the defendant, shall pay the costs of prosecution; and the jury so determining, in case they direct the prosecutor to pay the costs, shall name him or them in their return, or verdict; and in such case, the court, in which the said determination shall be made, shall forthwith pass sentence to that effect; and order him, her or them to be committed to the gaol of the county until the costs are paid, unless he, she, or they give security to pay the same in ten days — This provision is made perpetual by act of 29th of March, 1809.)

By act of 3d of April, 1804, (chap. 2510,) every person who shall commit perjury, or suborn, or procure any person to commit perjury, by wilfully and falsely swearing or affirming, shall, upon being thereof convicted in any court of law within this commonwealth, forfeit and pay any sum not exceeding five hundred dollars, and suffer imprisonment, and be kept at hard labour during any term not exceeding seven years, at the discretion of the court before whom such conviction shall be had; and further, shall thereafter be disqualified from holding any office of honour, trust or profit in this commonwealth, and from being admitted as a legal witness in any matter of controversy.

By the act entitled "A supplement to sundry penal laws of this commonwealth," passed 21st of March, 1805, (chap. 2687,) the first section of which has been before cited in this note, it is

further enacted, § 2. That in all cases of larciny, wherein by the laws of this commonwealth, in addition to restitution of goods stolen, it is directed that any person convicted of such crime, shall pay to the commonwealth the like value of such goods, and in *all cases*, where by law, a fixed or specific fine is affixed to the commission of any crime, the court, before which conviction of any of the crimes aforesaid shall be had, is hereby authorized in lieu thereof, to sentence the offender to pay such fine as the said court, in its discretion, may judge right; *Provided*, the same shall not exceed the fine heretofore affixed by law.

§ 3. If any person or persons shall wilfully set fire to any barn, stable or out-house, or to any barrack, rick or stack of hay, grain or bark, with intent to destroy the same, or shall be an accessory, or accessaries before the fact, such person or persons being thereof legally convicted shall suffer an imprisonment at hard labour in the jail and penitentiary house in the city of *Philadelphia*, for any term not less than five years, nor more than twelve years, and pay a fine not exceeding two thousand dollars, at the discretion of the court.

§ 4. Any of the presidents of the courts of Common Pleas, may admit to bail any person accused of any or either of the crimes of robbery, burglary, sodomy or buggery, as fully, amply and effectually, as the Judges of the Supreme Court, or some, or one of them might or could do under the act in the text. (see sect. 2.)

By an act entitled "An act to restrain the horrid practice of duelling," passed 31st of March, 1806, (chap. 2717,) if any person within this commonwealth shall challenge by word or writing the person of another, to fight at sword, rapier, pistol or other deadly weapon, or if any person so challenged shall accept the said challenge, in either case, such person so giving, or sending, or receiving any such challenge, shall for such offence, being thereof lawfully convicted in any court of record within this commonwealth, by the testimony of one or more witnesses, or by confession, forfeit and pay the sum of five hundred dollars, and shall suffer one year's imprisonment at hard labour in the same manner as convicted felons are now punished, and moreover shall forfeit and be deprived of all right of citizenship within this commonwealth for the term of seven years.

§ 2. If any person shall willingly and knowingly carry and deliver any written challenge, or shall verbally deliver any

message, purporting to be a challenge, or shall consent to be a second in any such intended duel, and shall be thereof legally convicted as aforesaid, he or they so offending, shall for every such offence, forfeit and pay the sum of five hundred dollars, and suffer one year's imprisonment at hard labour, in the same manner as convicted felons are now punished, and moreover shall forever thereafter be rendered incapable of holding any office of honour, trust or profit, within this commonwealth, which incapacity shall be declared, and made part of the judgment of the court.

§ 3. In any case it shall be sufficient to form an indictment, generally, against either of the principals, for challenging another to fight at deadly weapons, and notwithstanding it may appear on the trial that the defendant only accepted the challenge, it shall be sufficient to convict, and render him liable to the penalties of this act, and in like manner an indictment against the seconds may be framed generally for carrying and delivering a challenge, and proof of the mere act of fighting, and the defendant being present thereat, shall be sufficient to convict the defendant upon an indictment so framed, and if the duel shall take place within this commonwealth, the mere fact of fighting shall be full and complete evidence of the charges respectively of giving or receiving, or of carrying or delivering, a challenge, without other proof thereof.

§ 4. If any person shall have knowledge of any challenge to fight with any deadly weapons given or received, or in any manner be witness to the fact of such challenge, duel, or fighting, not being a second thereat, or party criminal therein, and shall conceal the same, and do not inform thereof, he or she shall be guilty of a misdemeanor; and upon conviction thereof, shall be adjudged to pay a fine of fifty dollars, and moreover suffer nine months imprisonment, without bail or mainprize.

§ 5. If any person or persons shall presume to publish in any newspaper, or post by hand-bills, written or printed, or otherwise, any other person or persons, as a coward or cowards, rascal, or rascals, liar or liars, or use any other irritating abusive language for not accepting a challenge, or fighting a duel, such person or persons shall for such offence, being thereof convicted, be subject to the same punishment as though he or they had fought a duel, as provided by the first section of this act, and the publisher or printer shall

in all prosecutions under this section be summoned as a witness, and accepted by the courts as a good witness against the writer or writers of such publication or hand-bill; and if the said printer or printers, when summoned before the court, shall refuse to give up the writer's name or names, the court shall consider him or them as the author or authors thereof, and proceed to punish him or them accordingly.

By the first section of the act of 4th of April, 1807, (chap. 2805,) before cited, instead of two years imprisonment, to which the power of the courts of this commonwealth is limited, in and by the fourth section of the act in the text, the said courts respectively shall hereafter be invested with the power of extending the confinement in such cases, to a period not exceeding seven years in their discretion, according to the circumstances of the case before them; provided, that the power thus conferred on the said courts shall not extend to offences enumerated in said section, of bigamy, or of being an accessory after the fact, in any felony, or of receiving stolen goods, knowing them to have been stolen.

By an act entitled "An act to declare masquerades and masqued balls to be common nuisances, and to punish those who promote or encourage them," passed 15th of Feb'y, 1808, (chap. 2903,) it is enacted, that masquerades or masqued balls be, and they are hereby declared to be common nuisances; and every housekeeper within this commonwealth, who shall knowingly permit or suffer a masquerade or masqued ball, to be held or given in his or her house, and every person who shall set on foot, promote or encourage, any masquerade or masqued ball, and every person who shall knowingly attend or be present at any masquerade or masqued ball, in mask, or otherwise, being thereof legally convicted in the Mayor's Court of the city of Philadelphia, or in any Court of Quarter Sessions of the Peace, or *Oyer and Terminer* and General Gaol Delivery, shall, for each and every such offence, be sentenced to an imprisonment not exceeding three months, and to pay a fine not exceeding one thousand, nor less than fifty dollars, and to give security in such sum as the court may direct to keep the peace, and be of good behaviour for one year.

§ 2. Prescribes a general form of indictment, under which any of the offences declared in the first section may be given in evidence, as if the same had been therein particularly set forth and

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described; and no exception shall be allowed to such indictment for insufficiency of form.

Every person or persons who shall be concerned in any banking house, or office of discount and deposit, in this state, under any company incorporated by the laws of any other of the United States, on conviction thereof in any court of justice within this state, shall, for every such offence, forfeit and pay for the use of the same, two thousand dollars, &c. Act of 28th of March, 1808, (chap. 3002.)

Unincorporated banks shall not issue any notes in nature of bank notes, payable to bearer, or order, or otherwise; or loan any sum or sums of money upon any actual or accommodation note or notes; or receive any sum or sums in the nature of deposits; or do or perform any other act which an incorporated banking company may lawfully do; and each and every person so offending, shall, on conviction thereof, before any Alderman, or Justice of the Peace, forfeit and pay for every such offence, the sum of one hundred dollars; one half to the use of the informer, and the other half for the use of the commonwealth; and it is declared to be unlawful for any person or persons to make any deposit in any such bank, or to offer at any such bank any actual or accommodation note for discount; or to take or transfer any share or shares of the stock of any such association for the purposes of banking; and a similar forfeiture, in like manner recoverable, &c. Paying and receiving the notes are also declared to be unlawful; and all payments which may be made or accepted, wherein any such note or notes shall be the medium, shall be, and the same are declared to be null and void. Act of 19th of March, 1810.

No body politic or corporate, of any foreign state, kingdom or country, no company or co-partnership of foreigners, by themselves, or any agent or agents of such company or copartnership, and no person or persons who is or are not a citizen or citizens of the United States, shall be insurers in any case within this state, against loss at sea, against loss by fire, upon any property within the same, upon the inland transportation of any goods, wares or merchandize, in or out of this state, or upon the life or lives of any person or persons, residing within the same, and all contracts and policies entered into by any such person or persons, company, co-partnership, or body politic or corporate, as insurers, shall be null and void. If any person shall make or renew any contract or policy of insurance as insurer, on account,

or in behalf of, or as agent for any body politic or corporate, of any foreign state, kingdom or country, any company or co-partnership of foreigners, or any person or persons who is or are not a citizen or citizens of the United States, within this state, every such person so offending, shall, on conviction in any court of competent jurisdiction, forfeit and pay the sum of five thousand dollars, for every such offence, one half to the use of the commonwealth, and the other to the use of the informer, who shall sue for the same. If any citizen of this commonwealth, who shall make or renew any contract or policy of insurance, as a party insured with any foreign company or corporation, any agent or agents for any such company or corporation, or with any person or persons who is or are not citizens of the United States, every person so offending, shall, on conviction in any court of competent jurisdiction, forfeit and pay the sum of five hundred dollars to the uses aforesaid, and in all and either case or cases, the policy or policies shall be deemed and received as conclusive evidence of such contract or insurance; *Provided*, that the penalty herein mentioned shall not be construed to extend to any case of marine insurance made in any foreign country by any agent or agents for any American merchant or merchants, so as to secure the vessel or cargo belonging to any American merchant or merchants; nor to prevent any foreigner or foreigners from having his, her or their property insured within this state, excepting only an alien enemy. Act of 10th of March, 1810.

No person shall be subject to prosecution by indictment in any of the courts of this commonwealth, for the publication of papers examining the proceedings of the legislature or any branch of government, or for investigating the official conduct of officers or men in public capacity.

In all actions or criminal prosecutions of a libel, the defendant may plead the truth thereof in justification, or give the same in evidence, and if any prosecution by indictment, or any action be instituted against any person or persons contrary to the true intent and meaning of this act, the defendant or defendants in such action or indictment may plead this act in bar, or give the same in evidence on the plea of not guilty.—To continue in force for three years, and from thence to the end of the next session of the legislature. Act of 16th of March, 1809.

On the construction of this act, see the case of the *Commonwealth v. Duane*, 1 Binney, 601.—And see the 7th sec-

tion of the 9th article of the existing constitution.

The power of the Judges of the courts to issue attachments, and inflict summary punishments for contempts of court, shall be restricted—to the official misconduct of the officers of such courts respectively—to the negligence or disobedience of officers, parties, jurors, or witnesses, against the lawful process of the court—to the misbehaviour of any person in the presence of the court, obstructing the administration of justice. All publications out of court, respecting the conduct of the Judges, officers of the court, jurors, witnesses, parties, or any of them, of, in and concerning any cause pending before any court, shall not be construed into a contempt of said court, so as to render the author, printer, publisher or either of them, liable to attachment and summary punishment for the same; but if such publication shall improperly tend to bias the minds of the public, the court, the officers, jurors, witnesses, or any of them, on a question pending before the court, any person feeling himself aggrieved by such publication, shall be at liberty to proceed by indictment, or to bring an action at law against the author, printer, publisher, or either of them, and recover thereupon such damages as a jury may think fit to award.

The punishment of imprisonment in the first instance shall extend only to such contempts as are committed in open court; and all other contempts shall be punished by fine only; *Provided*, that the Sheriff, or other proper officer, may take into custody, confine, or commit to gaol, any person confined for a contempt, until such fine is discharged or paid; but if he shall be unable to pay such fine, such person may be committed to prison by the court, for any time not exceeding three months.

This act not to extend to rules on Sheriffs, &c. and is limited to two years, and to the end of the next session.—Act of 3d of April, 1810.

For contempts before arbitrators under the arbitration law, see the 21st section of the act of 20th of March, 1810.

By act of 30th of January, 1810, the robbery or larceny of any bank note, or bank notes of any incorporated bank, shall be punishable in the same manner as the robbery or larceny of any goods or chattels of equal amount.

For the general law for the prevention of vice and immorality, and of unlawful gaming, and to restrain disorderly sports and dissipation, see the act of 22d of April, 1794, (chap. 1746.)

When a number of persons shall be charged and tried on one indictment,

costs shall be taxed, as if the name of one person only was contained in the said indictment. Act of 7th of Dec'r, 1804, (chap. 2513.)

In all cases where two or more persons have committed an indictable offence, the names of all concerned, (if a prosecution shall be commenced,) shall be contained in one bill of indictment, for which not more costs shall be allowed, than if the name of one person only was contained therein. Act of 28th of March, 1805, (chap. 2571.)

These provisions being limited, were made perpetual by act of 29th of March, 1809 with this addition, "That any prosecutor, notwithstanding his being liable for the payment of, or exemption from costs, shall be a competent witness before the grand or *petit* jury."

No person who may hereafter be arraigned on an indictment, and who shall be bound by recognizance to abide the judgment of the court, shall be put within the prisoner's bar, to plead to the same, or be confined therein during his or her trial, but shall have an opportunity of a full and free communication with his or her counsel: act of 28th of March, 1808, (chap. 2984.)

In all criminal prosecutions, wherein peremptory challenges have not been heretofore permitted by law, the defendant or defendants shall be allowed to challenge four jurors peremptorily; act of 4th of April, 1809.

By the judiciary act of 13th of April, 1791, (chap. 1564.) The president and judges of the court of Common Pleas, shall have and execute all and singular the powers, jurisdictions and authorities of judges of the courts of Oyer and Terminer, and General Gaol Delivery, and justices of the courts of Quarter Sessions of the peace, agreeably to the laws and constitution of this commonwealth. (sect. 3.)

Whenever any person shall be indicted in any court of Oyer and Terminer, Gaol Delivery, or Sessions of the peace, the party charged shall be at liberty to remove the said indictment, and all proceedings thereupon, or a transcript thereof, into the Supreme Court, by a writ of *Certiorari*, or by a writ of error, as the case may require. *Provided*, That no such writ of certiorari, or writ of error, shall issue, or be available to remove the said indictment, and proceedings thereupon, or a transcript thereof, or to stay execution of the judgment thereupon rendered, unless the same shall be specially allowed by the Supreme Court, or one of the Justices thereof, upon sufficient cause to it, or him shewn, or shall have been sued

1790. out with the consent of the Attorney-General; which special allowance or consent shall be in writing, and certified on the said writ, (sect. 7.) See the fifth section of the fifth article of the constitution.

This privilege is involved in difficulties, if not rendered useless, as to removals by *Certiorari*, from any of the county courts except *Philadelphia*, by the act abolishing the Circuit Courts, passed the 11th of March, 1809. But by the 9th section of that act, it is provided, that where any person or persons may be indicted, prosecuted or charged with any criminal offence, in the Mayor's Court of the city of *Philadelphia*, the defendant or defendants, traverser or traversers, in addition to his, her or their right or power to remove the same into the Supreme Court, as heretofore, may forthwith, but not at any after session, of right demand, that such indictment, prosecution or charge, with all the records and proceedings touching the same, be transferred or remitted to the court of Quarter Sessions of the peace of the county of *Philadelphia*, and the same shall be there proceeded in, tried and determined in the same manner, and to all intents and purposes, according to law, as if the same had been found, prosecuted, or instituted in the said court of Quarter Sessions.

For the limitation of suits, and indictments on penal acts of Assembly, where the penalty is pecuniary, see chap. 1134, sect. 6, ante, page 299.

General summary of crimes, and their punishments.

The enlightened *Beccaria* observes "That every member of society should know when he is criminal, and when innocent. If arbitrary magistrates be necessary in any government, it proceeds from some fault in the constitution. The uncertainty of crimes hath sacrificed more victims to secret tyranny, than have ever suffered by public and solemn cruelty."

The learning touching these subjects, says the learned *Foster*, is a matter of great and universal concernment. It merits, for reasons too obvious to be enlarged on, the attention of every man living. For no rank, no elevation in life, no conduct how circumspect soever, ought to tempt a reasonable man to conclude, that these enquiries do not, nor possibly can, concern him. A moment's cool reflection on the utter instability of human affairs, and the numberless unforeseen events which a day may bring forth, will be sufficient to guard any man, conscious of his own

infirmities, against a delusion of this kind.

If, therefore, in this interesting summary, there should appear to be some repetition, the editor will be excused, because it is intended as "a beacon set up in a perilous place." To the learned of the profession, it can give no information. To the citizens of the commonwealth at large, who cannot have recourse to books and authorities, it will be important and useful.

A crime, or misdemeanor, is an act committed, or omitted, in violation of a public law, either forbidding or commanding it. Offences against the laws, says lord *Hale*, whether the common law, or acts of parliament, are divided into two general ranks, or distributions in respect of the punishments that are by law appointed for them, or in respect of their nature or degree; and thus they may be divided into capital offences, or offences only criminal; or, more properly, into 1, felonies, 2, misdemeanors; because there is no capital offence but hath in it the crime of felony; and yet there be some felonies, that are not in their nature capital.

Simple felony is likewise of the same distribution, namely, such as were felonies at common law, and such as are by statute put under the degree, or under the punishment of felony.

And the same distribution is to be made touching misdemeanors. Such as are so by the common law, or, such as are specially made punishable by act of parliament. *H. H. P. C. Proem.*

Felony in the general acceptation of the English law, comprizes every species of crime, which occasioned at common law, the forfeiture of lands or goods. All treasons, therefore, strictly speaking, are felonies; though all felonies are not treason. And this, also we may add, that not only all offences, now capital, are in some degree or other felony; but that this is likewise the case with some other offences, which are not punished with death; as suicide, where the party is already dead; homicide by chance medley, or self defence; and *petit* larceny, or pilfering; all which are (strictly speaking) felonies, as they subject the committers of them to forfeitures, so that upon the whole, the only adequate definition of felony seems to be that which is before laid down; viz. An offence which occasions a total forfeiture of either lands, or goods, or both, at the common law; and to which capital, or other punishment may be superadded, according to the degree of guilt. 4. *Black. Com.* 94-5.

For the numerous felonies punished

as directed by the English law, the reader is referred to the act of 31st of May, 1718, vol. 1, page 105.

The law of forfeiture has, however, undergone a great change in Pennsylvania.

By the 19th section of the ninth article of the constitution, "No attainder shall work corruption of blood, nor, except during the life of the offender, forfeiture of estate to the commonwealth; that the estates of such persons as shall destroy their own lives shall descend or vest as in case of natural death; and if any person shall be killed by casualty, there shall be no forfeiture by reason thereof."

By the ninth section of the act of 23d of September, 1791, "Wherever any person shall be convicted of any robbery or burglary, the forfeiture of his, her or their lands and chattels shall only extend to the residue thereof, after restitution made to the owner of the goods and chattels stolen, or the value thereof."

Forfeiture was annexed to the conviction of these crimes, by the second section of the act in the text.

But if it shall be considered, by the operation of the existing penal laws, where a particular judgment or punishment is prescribed for offences heretofore felony, and that forfeiture is no consequence of a conviction: yet it is presumed the grade of crime is not changed. They will still be felonies. The acts of the legislature still speak of felons convict, and of felonies. The legislature may declare crimes to be felony, which were not so at common law. The forms of indictment have undergone no change.

There is an offence known to the law, called *misprison* of felony, which is a concealment of a felony which a man knows, but never assented to; for if, he assented, this makes him either a principal, or accessory. It is punishable by discretionary fine and imprisonment. 4 Black. Com. 121.

Theft-bote, is where the party robbed, not only knows the felon, but also takes his goods again, or other amends, upon agreement not to prosecute. This is frequently called *compounding* of felony. By the English statute of 25th of George 2d, c. 36, even to advertise a reward for the return of things stolen, with no questions asked, or words to the same purpose, subjects the advertiser and the printer, to a forfeiture of £. 50 each. 4 Black. 133-4. But this statute does not extend to *Pennsylvania*.

The act of 31st of May, 1718, sect. 32, describes and punishes the offence,

thus, "If any person or persons shall agree or compound, or take satisfaction, for any stealing, or goods stolen, such person shall forfeit twice the value of the sums agreed for or taken; but no person shall be debarred from taking his goods back, which are stolen, *provided he prosecute the felon*. Vol. 1, page 123.

OF HIGH TREASON.

The great body of the statute law of *England* which relate to treason, or misprison of treason was struck from the criminal code of *Pennsylvania*, by the act of 28th of January, 1777, vol. 1, page 430.

By another act passed 11th of February, 1777, vol. 1, page 435, all and every person and persons (except prisoners of war,) now inhabiting, residing, or sojourning within the limits of the state of *Pennsylvania*, or that shall voluntarily come into the same hereafter to inhabit, reside, or sojourn, do owe, and shall pay allegiance to the state of *Pennsylvania*.

If any person or persons, belonging to or residing within this state, and under the protection of its laws, shall take a commission or commissions from the king of Great Britain, or under his authority, or other the enemies of this state, or the United States of America; or who shall levy war against the state, or government thereof; or knowingly and willingly shall aid or assist any enemies at open war against this state, or the United States of America, by joining their armies, or by enlisting, or procuring or persuading others to enlist for that purpose, or by furnishing such other enemies with arms or ammunition, provision, or any other article or articles, for their aid or comfort, or by carrying on a traitorous correspondence with them, or shall form, or be anywise concerned in forming any combination, plot or conspiracy, for betraying this state, or the United States of America, into the hands or power of any foreign enemy, or shall give or send any intelligence to the enemies of this state for that purpose; every person so offending, and being thereof legally convicted, by the evidence of two sufficient witnesses in any court of Oyer and Terminer, shall be adjudged guilty of high treason. The punishment was death, and forfeiture of estate to the commonwealth.

By an act passed the 3d of December, 1782, (ante. page 60,) it was enacted, that any persons who shall erect or form, or shall endeavour to erect or

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form, any new or independent government within the boundaries of this commonwealth; or who shall set up any notice, calling on the people to meet with that design; or who shall assemble for that purpose, in consequence of such notice; or who shall, at any such meeting, maliciously and advisedly recommend or desire the people to erect or form any new independent government in any part of this state; or shall read to them any new form of constitution, with a design to induce them to adopt the same, as a new and independent constitution; shall be adjudged guilty of high treason; and on conviction by the evidence of two witnesses shall suffer death, and forfeiture of estate.

This act has hitherto remained a dead letter. Indeed were we to judge from the preamble of the act, the very grounds and principles upon which it was passed, are extinguished. The price of the western (and then unlocated) lands, is chiefly in the coffers of the commonwealth. The motives for separation, if separation was ever thought of, are removed. The strong tie of interest binds now in opposition to the crime. Still it is the law. But the object itself is now impracticable. By the constitution of the United States, article 4, sect. 3, it is now established, that no new state shall be formed or erected within the jurisdiction of any other state, nor any state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned, as well as of the Congress. From the completion of the crime we are therefore protected by the strong arm of the union. Shall that union ever be dissolved, by internal weakness, or external violence, vain, indeed, for the moment, will be all penal laws!

PUNISHMENT OF HIGH TREASON IN PENNSYLVANIA.

By the 4th section of the act of 22d of April, 1794, every person duly convicted of the crime of High Treason, shall be sentenced to undergo a confinement in the gaol and penitentiary-house of *Philadelphia*, for a period not less than six, nor more than twelve years, and shall be kept therein at hard labour, or in solitude, and shall in all things be treated and dealt with as is prescribed by the act in the text, &c. For the second offence, imprisonment, &c. during life. (Sect. 15.)

By the constitution of the United States, art. 3, sect. 3, Treason against the *United States* shall consist only in levying war against them, or in adhering

to their enemies, giving them aid and comfort. No person shall be convicted of Treason, unless on the testimony of two witnesses to the same overt act, or on confession in open court.

The act of congress on the same subject, passed 30th of April, 1790, is in these words. If any person or persons, owing allegiance to the United States of America, shall levy war against them, or shall adhere to their enemies, giving them aid and comfort, *within the United States, or elsewhere*, and shall be thereof convicted, on confession in open court, or on the testimony of two witnesses to the same overt act of the Treason whereof he or they shall stand indicted, such person or persons shall be adjudged guilty of Treason against the United States, and shall suffer death.

The term "*levying war*," is used in the constitution of the United States, in the same sense in which it was understood in *England*, and in this country, to have been used in the statute of 25th of Edward 3d, from which it was borrowed.

On this important subject, see the notes to chap. 729, vol. 1, page 436.

OF MISPRISON OF TREASON.

By the English law, misprison of Treason consists in the bare knowledge, or concealment of Treason, without any degree of assent thereto; for any assent makes the party a principal traitor. Stat. 1 and 2, *Phil. and Mary. c. 10*. This concealment becomes criminal, if the party apprized of the Treason does not, as soon as conveniently may be, reveal it to some judge of assize, or Justice of the peace. But if there be any probable circumstances of assent, as if one goes to a treasonable meeting, knowing before hand, that a conspiracy is intended against the king, or being in such company again, and hears more of it, but conceals it; this is an implied assent in the law, and makes the concealer guilty of actual High Treason. 4 *Black. Com.* 120.

But the English law respecting misprison of Treason, having been abolished in this state, the offence is thus extensively described by the act of 11th of February, 1777, vol. 1, page 436.

If any person or persons within this state, shall attempt to convey intelligence to the enemies of this state or the United States of America, or by publicly and deliberately speaking or writing against our public defence; or shall maliciously and advisedly endeavour to excite the people to resist the government of this commonwealth, or persuade them to return to a depen-

dence upon the crown of Great Britain; or shall maliciously and advisedly terrify or discourage the people from enlisting into the service of the commonwealth, or shall stir up, excite, or raise tumults, disorders or insurrections in the state, or dispose them to favour the enemy; or oppose and endeavour to prevent the measures carrying on in support of the freedom and independence of the United States; every such person, being thereof legally convicted, by the evidence of two or more credible witnesses, in any court of General Quarter Sessions, shall be adjudged guilty of misprision of Treason, and shall suffer imprisonment [during the present war,] and forfeit to the commonwealth one half of his or her lands and tenements, goods and chattels. (See the constitution.)

This section surely wants revision.

By the act of March 8th, 1780, vol. 1, page 500. In all cases where any charge is made upon oath or affirmation against any person or persons, of facts amounting to Treason, or misprision of Treason, it shall and may be lawful for the Attorney-General, with the leave of the court, to proceed against, and charge such person or persons with a misdemeanor, and give in evidence any act or acts of Treason, or misprision of Treason, by one witness on the trial, or other proper and legal testimony, and such person or persons, on conviction, shall suffer as in cases of misdemeanor.

See the case of the *Commonwealth v. Weidle*, vol. 1, page 439. (Note.)

By the act of Congress of 30th of April, 1790. If any person or persons, having knowledge of the commission of any treason, shall conceal, and not as soon as may be, disclose and make known the same to the President of the United States, or some one of the judges thereof, or to the president or governor of a particular state, or some one of the judges or justices thereof, such person or persons, on conviction, shall be adjudged guilty of misprision of Treason, and shall be imprisoned not exceeding seven years, and fined not exceeding one thousand dollars.

This follows the English law above stated.

OF MURDER.

The highest degree of murder known to the English law, is petit (or petty) Treason. It is an offence described by the statute of 25th *Edward 3*, c. 2, and is committed when a servant killeth his master, when a wife killeth her husband, or when a secular or religious slayeth his prelate, to whom he oweth faith and obedience.

It will be obvious to the reader,

that this latter was no part of the law of *Pennsylvania*. This crime, thus defined, was adopted by the sanguinary law of the 31st of May, 1718, vol. 1, page 111. Let us then understand what the law was, before we proceed to consider what the law is. Even at this day, when our penal code is tempered with as much humanity as is compatible with the safety of society, the learning on this subject may not be altogether useless.

A person guilty of *petit* Treason might be indicted of murder, for it is a species of murder; and such facts and circumstances as would convict another man of murder would convict, a wife or servant of *petit* Treason. *Fort* 325. If done upon a sudden provocation, and without malice, it would be only manslaughter. 1 *Hale*, 578, 1 *Hawk.* (folio) 88.

If a wife conspire to kill her husband, or a servant to kill his master, which is done by a stranger in pursuance of that conspiracy, it is not *petit* Treason in the wife or servant, because it is only murder in the principal. The accessory can be guilty of no higher crime than his principal; 1 *Hale*, 578-9, *Finch* 17, 1 *Hawk.* (folio) 88, 3 *Inst.* 20, 139. But if a wife procure a servant to kill her husband, both are guilty of *petit* Treason. *ib.*

If a wife, or servant, intending to poison, or kill a stranger, by mistake kills the husband or master, as it would have been murder if it had taken effect upon the stranger, so it is *petit* Treason in the death of the husband, or master. 1 *Hale*, 579.

If a wife or servant conspire with a stranger to kill the husband, or master, and by agreement be in the same house, though not in the same room, in judgment of law they are present and are principals, and guilty of *petit* Treason; but the stranger is guilty of murder only. 1 *Hale*, 579, 1 *Hawk.* (folio) 88. See *Kel.* 53.

But it is said, that if a stranger procure a wife or servant to kill the husband, or master, he may be indicted as accessory to *petit* Treason, 1 *Hawk.* (folio) 88. But the judgment shall be only as in case of a felony; for being a stranger, he cannot be guilty of *petit* Treason as principal, *ib.* and 1 *Hale*, 582.

If a servant, being gone from his master, kills him upon a grudge conceived against him while he was in his service, which he attempted while a servant, but was disappointed, it is *petit* treason, 1 *Hale*, 580. *Plowd.* 260, 3 *Inst.* 20 1 *Hawk.* (folio) 88.

If a child murder his father or mo-

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ther, although a more heinous offence, it is not *petit* treason, for the judges are restrained from interpreting the statute *a minore ad majus*, (unless he live with his father as a servant, and receive wages, or meat and drink from him for his service, or be bound apprentice to him, and kills his father or mother, this is *petit* treason, and he shall be indicted by the name of servant,) 1 *Hale*, 380. 1 *Hawk.* (folio,) 87. 3 *Inst.* 20. *Dallison*, 14. For, by 1 *Mary*, stat. 1, c. 1, nothing is *petit* treason, but what is expressly, and without argument or inference, declared to be so by 25 *Edw.* 3, for such a statute ought not to be extended by equity.

By the act of 22d of April, 1794, the distinction between *petit* treason and murder is abolished; and, by sect. 3, every person liable to be prosecuted for *petit* treason, shall in future be indicted, proceeded against and punished, as is directed in other kinds of murder.

A compendious abridgment of the law on this subject as it stood previous to the act of 1794, will greatly assist the reader in marking the distinction and degrees of crimes which now necessarily arise upon that great act. The authorities are also copiously given for the convenience of the learned in the profession, who may at any time, suddenly, have occasion to pursue the subject more minutely.

The taking away the life of a man, whether it amount to felony, or not, is called by the general name of homicide; and by the English law, is branched out and distinguished into, 1. Murder, 2. Manslaughter, 3. Homicide *per infortunium*, (misfortune, or accident,) or chance-medley, 4. Self defence and justifiable homicide.

Murder has long since been settled to be, the voluntary killing a person of *malice prepense*, and that whether it was done secretly or publicly, (*Lord Coke* adds, *unlawfully*, 2 *Inst.* 47.)—So that the party die within a year and day. 2 *Lord Raym.* 1487, 1573.—2 *Stra.* 770.—1 *Hawk.* (folio,) 78-9.—1 *Hale*, 425.—3 *Inst.* 47-53.—4 *Black. Com.* 195-197.

Malice, express or implied, is an essential ingredient to make the killing a person murder.—Malice *express*, is a design formed of taking away another man's life, or of doing some mischief to another, in the execution of which design, death ensues.—Malice *implied*, is collected either from the manner of doing, or from the person slain, or the person killing.—Thus, *wilfully poisoning* implies malice;—or doing an act that apparently must do harm, with an intent to do harm, and death ensues:—

or, if a man kills another without a sufficient provocation, 2 *Id. Raym.* 1448-1488-9-1573.—2 *Stra.* 770-1.—3 *Inst.* 47-52.—1 *Hawk.* 80. 4 *Black. Com.* 199. 1 *Hale*, 451-455. And where the circumstances of deliberation and cruelty concur, the fact is undoubtedly murder, as flowing from a wicked heart, a mind grievously depraved, and acting from motives highly criminal, which is the genuine notion of malice in the English law, *Fost.* 158-256. And most, if not all, the cases of implied malice in the books, if carefully adverted to, will be found to turn upon this single point, that the fact hath been attended with such circumstances, as carry in them the plain indications of an heart regardless of social duty, and fatally bent on mischief, *ib.* 257-291-2. *Kel.* 126-7.

Murder may be committed without any stroke; the law has not confined the offence to any particular circumstances or manner of killing; for there are as many ways to commit murder, as there are to destroy a man, provided it be done with malice either express or implied, 2 *Id. Raym.* 1578. 2 *Stra.* 884. 1 *Hale*, 431-2. *Palm.* 547-8. 1 *Hawk.* (folio,) 78. 4 *Black. Com.* 197. And see many instances, 3 *Inst.* 48.

Such was the case of him, who carried his sick father against his will, in a cold, frosty season, from one town to another, by reason whereof he died, 1 *Hawk.* 78. Such also was the case of the harlot, who being delivered of a child, left it in an orchard, covered only with leaves, in which condition it was struck by a kite, and died thereof, *ib.* 79. So, where a mother hid her infant in an hog-stye, and a sow came and devoured it. *Palm.* 548. 1 *Hale*, 431-2. 4 *Black. Com.* 197.

So, if a prisoner, by duress of the gaoler, comes to an untimely end, it is murder, 2 *Id. Raym.* 1578, putting prisoner in a dungeon, or place too strait, is duress, 3 *Inst.* 52-91 1 *Hale*, 452, 466. And the instances of oppression which may fall within the rule of duress of imprisonment, are as various as a heart cruelly bent upon mischief can invent. A gaoler, knowing a prisoner, infected with the small pox, lodged in a certain room in a prison confined another prisoner, *against his will*, in the same room; the second prisoner, who had not had the distemper, of which the gaoler had notice, caught it, and died of it. This was rightly held to be murder, 2 *Stra.* 856. Another straitly confined his prisoner in a low, damp, unwholesome room without allowing him the common necessities of chamber pot, &c. for keeping

things sweet and clean about him. The prisoner having been long confined in this manner, contracted an ill habit of body, which brought on distempers of which he died. This is murder. These were deliberate acts of cruelty, and enormous violations of the trust the law reposes in its ministers of justice, *ib.* 883-4, 2 *Ld. Raym.* 1574, *Fost.* 321-2. Therefore, where one dies in gaol, the coroner ought to be sent for, to enquire the manner of his death, 3 *Inst.* 91, 1 *Hale*, 432, 466.

Where one by duress of imprisonment, compels a man to accuse an innocent person, who, on his evidence, is condemned and executed, this is murder, 3 *Inst.* 91. 1 *Hawk.* (folio,) 79. But the learned *Foster* says, it is a doubt at this day, whether the taking away the life of an innocent man, by perjury, in a course of legal proceeding, amounts to murder. By the ancient writers it was so held. But the practice of many ages backwards, doth by no means countenance their opinion (*M^r Daniel and Berry's case*.) *Fost.* 131-2. But, by *Blackstone*, it is equally so in *foro conscientie*, as killing with a sword, and falls within the guilt of deliberate murder; and deserves an equal punishment, which the ancient law in fact inflicted. And nothing should be concluded from waiving the prosecution in the case of *M^r Daniel and Berry*. The attorney general declined arguing the point of law from prudential reasons, not from an apprehension it was not maintainable. However, the modern law has not yet punished it as murder. 4 *Black. Com.* 159-196-7.

An infant under the age of fourteen years, in presumption of law, is supposed without discretion, and therefore, *prima facie*, he cannot commit murder, nor manslaughter, but ought to be found not guilty, (under seven, never,) 1 *Hale*, 26-7, 434. *Pitowd* 19. But if upon circumstances it can appear that he hath discretion, and knew what the action was, as by excuses, endeavouring to conceal, &c. it will be murder; but the evidence ought to be strong and pregnant, to convict of that age, 1 *Hale*, *ib.* An infant of nine years, hid the blood, and the body, and convicted, 1 *Hale*, 27. A boy aged ten, convicted of murder, *Fost.* 70.

Lord Hale hesitates, whether, if one infected with the plague, goes abroad with intent to kill another, it be murder, 1 *Hale*, 432. But if a man, by working on the fancy of another, or possibly by harsh and unkind usage, puts another into such passion of grief and fear, that he either dies suddenly, or

contracts some disease whereof he dies, though, as the circumstances of the case may be, this may be murder or manslaughter in the sight of God; yet, in *foro humano*, it cannot come under the judgment of felony, *ib.* 429.

If a person hurt by another, die thereof within a year and a day, it is no excuse for the other that he might have recovered, if he had not neglected to take care of himself. Though the wound be not mortal in itself, but either for want of helpful applications, or neglect thereof, it turns to a *gangrene* or *fever*, which is the *immediate* cause of his death, it is murder or manslaughter as the case may be; for the stroke which caused the *gangrene*, &c. was the *mediate* cause of his death, being *causa causati*. But if the wound, or hurt, be not mortal, but with ill applications by the party, or those about him, of unwholesome salves or medicines, the party dies, if it can clearly appear, that this medicine, and not the wound, was the cause of his death, it seems not to be homicide; but then that must appear clearly and certainly to be so.—So, if a man be sick of some such disease, which possibly by the course of nature, would end his life in half a year, and another gives him a wound or hurt, which hastens his end, by irritating and provoking the disease to operate more violently or speedily, this is murder, 1 *Hale*, 428. See *Kel.* 26.—1 *Keb.* 17.—1 *Hawk.* (folio,) 79.

If a physician gives a person a potion, without any intent of doing him bodily harm, but with intent to cure or prevent the disease, and, contrary to his expectation, it kills the patient, it is not homicide, 1 *Hale*, 429.—4 *Black. Com.* 197.—1 *Hawk.* (folio,) 87.

If a woman be with child, and any one gives her a potion to destroy the child within her, and she takes it, and it works so strongly, that it kills her, it is murder, 1 *Hale*, 429. But if a woman with child take, or another gives her a potion, to make an abortion; or, if a man strikes her, whereby the child within her is killed, though anciently held to be murder, is now not murder, or manslaughter, by the law of *England*; because the infant is not *in rerum natura*, *ib.* 433.—4 *Black. Com.* 198.—3 *Inst.* 50.—Unless the child be born alive, and die by reason of the potion, or bruises it received in the womb. In which case it seems clearly to be murder, notwithstanding some opinions to the contrary, 1 *Hawk.* (folio,) 80.—This is the *better* opinion, 4 *Black. Com.* 198.—3 *Inst.* 50. *Lord Hale* is of a contrary opinion.—1 *Hale*, 433.—But if a

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man procures a woman with child to destroy her infant when born, and the child is born, and the woman in pursuance of that procurement, kills the infant, this is murder in the mother; and the procurer is accessory, 1 Hale, 433. 3 Inst. 51.—1 Hawk. (folio,) 89.—7 Rep. 9.—Dyer, 186, a-b.

If a man hath a beast that is used to do mischief, and he knowing it, suffers it to go abroad, and it kills a man, it is manslaughter in the owner. If he had purposely turned it loose, though barely to frighten people and make sport, it is as much murder, as if he had incited a bear, or dog to worry them, 1 Hale, 431. 4 Black. Com. 197. 1 Hawk. (folio,) 79.—So, if a person do a wanton, idle act, which cannot but be attended with manifest danger; or an action unlawful in itself, *deliberately*, and with an intention of mischief, either to particulars, or indiscriminately, fall where it may, and death ensue, though against the original intention of the party, it will be murder.—Thus, riding a horse, known to be used to kick, among a multitude of people, though only to divert himself, or frighten them, and one is killed, it is murder, 1 Hawk. (folio,) 86-7.—2 Ld. Raym. 1488. If one throw a stone over a wall, among a multitude, intending only to frighten them, or hurt them lightly, and a man is killed, it is murder upon the same principle. The act was *unlawful*, 3 Inst. 57. See 1 Ld. Raym. 143. But if such mischievous intention does not appear, but the act was done heedlessly and incautiously, it is manslaughter; not accidental death, *for the act was unlawful*. See *Fost.* 261.

And, in judgment of law, a man may be said to kill another, who in truth was killed by a third person. As, if a man incites a madman to kill himself, or another; or where A. by force, takes the arm of B. and the weapon in his hand, and stabs C. therewith; it is murder in A. but B. is not guilty. But if a man be *non compos*, or if a lunatic, in the time of his lunacy, kills a man, he may plead not guilty, and be acquitted, 1 Hale, 434. *Plowd.* 19. 1 Black. (folio,) 72. But if one that is *drunk*, kills another, it is no excuse, but it is murder, *Plowd.* 19. 4 Black. Com. 286.

In some instances, the books say, *malice creditur personam*. Thus it is murder if A. with malice aims at B. but kills C. and where an injury intended against A. proceeded from a wicked, murderous, or mischievous motive, the party is answerable for all the consequences of the action, if death ensue from it, though it had not its effect upon the person whom he intended

to destroy. According to the circumstances, it will be murder or manslaughter, *Fost.* 261, 2. See 1. Hale, 438. *Plowd.* 101. 4. Black. Com. 201. If a man lays poison, with intent to kill a certain person, which is accidentally taken by another, who dies thereof, it is murder; but if laid to kill rats, and a man casually takes it, it is no felony, 1 Hale, 431. 9 Rep. 81. 1 Hawk. (folio,) 79, or if a man takes poison himself by the persuasion of another, though in the absence of the persuader, it is murder, and the persuader is principal in it, 4 Rep. 44 b. or, if A. gives poison to B. intending to poison him, and B. ignorant of it, gives it to C. a child, or other near relation of A. against whom he never meant harm, and C. takes it and dies: this is murder in A. and a poisoning by him, and C. is not guilty. 1 Hale, 431-3-6. *Plowd.* 474.

A married woman commits murder, &c. the coercion of her husband is no excuse. 1 Hale, 434. To kill an alien enemy within the kingdom, unless in the heat of war, and actual exercise thereof; or to kill one attainted of felony, otherwise than in execution of the sentence, by a lawful officer; is murder, or manslaughter, as the case may be; or, if a man be condemned to be hanged, and the Sheriff beheads him, it is murder. 1 Hale, 433-454. *Fost.* 267. Or the Court of Common Pleas execute a man for treason or felony; or, a Court martial, in time of peace, put a man to death by martial law, the Judges and officers are guilty of murder. 1 Hawk. (folio,) 70. 86.—But where the persons act by virtue of a commission, which, if it were strictly regular, would undoubtedly give them full authority, but happens to be defective only in some point of form, it seems they are no ways criminal. 1 Hawk. (folio,) 86.

When one voluntarily kills another, without any provocation, it is murder, for the law presumes malice, where there is not a sufficient provocation. If A. comes to B. and demands a debt of him, or comes to serve him, with a *Subpoena*, and B. thereupon kills A. it is murder, for here is no provocation. So W. came along by the shop of B. and disordered his mouth, and smiled at B. who pursued and killed him; held to be murder, for it was no such provocation as would abate the presumption of malice in the party killing, (*Watts and Frairs' case.*) 1 Hale, 455, See 3 Inst. 52,—9 Rep. 67 b. 2 Stra. 771. Kel. 127. Cro. J. 778-9. For in all cases there must be a proportion in the provocation to the act of violence done after; as if a man break my close, and I

with a stake beat his brains out, it is murder, because the provocation bore no proportion to the death of the man, and there should be an *open act of violence* to make it manslaughter, *Kel.* 132. 2 *Ld. Raym.* 1298. So, where a Park keeper found a boy stealing wood, and tied him to a horse's tail and beat him, whereupon the horse run away and killed him; it is murder, for the correction was excessive, and an act of deliberate cruelty, 1 *Hale*, 454.—*Kel.* 127. *Cro. Car.* 131.—1 *Jones*, 198.—*Palmer*. 545.—*Fost.* 292. If there be a chiding between husband and wife, and the husband strikes his wife thereupon, with a pestle, that she dies presently, it is murder; the chiding will not be a provocation to extenuate it to manslaughter. 1 *Hale*, 457.

A provocation *sought* on the part of the slayer, aggravates the offence. Thus, A. and B. warmed with liquor, first *played*, then fought in earnest, but were parted. A. went away angry, and threatened to fetch something to stick B. he changed his clothes, returned with a sword concealed, and a cudgel in his hand;—drew on a discourse of the quarrel, and offered to cudgel with B. B. went up to him, and A. *thereupon* dropped his cudgel, which B. took up, and gave A. two blows on the shoulder. A. then drew the concealed sword, and said “stand off or I’ll stab you,” and thrust at him, but missed him. B. drew back, but A. shortened his sword, and leaped upon him, and stabbed him to his death. It is murder. *Fost.* 132-4 5. So A. and B. having some difference, A. bid (or dared) B. to take a pin out of his sleeve, intending thereby to take an occasion to strike or wound B. which B. did accordingly, and A. struck B. whereof he died. It is murder, because it was no provocation, but a deliberate artifice to take occasion to kill B. 1 *Hale*, 457. Or, if A. on a quarrel with B. tell him, he will not strike him, but that he will give him (B.) a pot of ale to strike him, (A.) which B. accordingly does, and then A. kills B. he is guilty of murder, for he shall not elude the Justice of the law by such a pretence to cover his malice, 5 *Bac.* 122, (5th Edo.)

In all possible cases, deliberate homicide upon a principle of revenge, is murder, how great soever, the provocation may be. Thus if the husband, deliberately, upon revenge, kills an adulterer, after the fact, and sufficient cooling time, it is murder. Though it had been only manslaughter, if, finding him in the fact, he had killed him in the first transport of passion. *Fost.* 296. 1 *Hale*,

486. 1 *Vent.* 158-9. *Kel.* 137. *T. Raym.* 212. 2 *Keb.* 829. A. and B. quarrelled at a tavern, and offered to fight, but were prevented. They continued together for an hour, in company. B. offered to make it up, but A. refused, and said, “no, damn you, I’ll have your blood.” The reckoning was paid by them jointly, and all the company went out. But as B. was going with them, A. who had staid behind, called him back, and said, “young man, come back, I have something to say to you.” B. returned, the door was flung to, and the rest of the company kept out. They fought, and B. was killed. This was held to be murder by the twelve Judges, though it was found there was no reconciliation, and though A. in the fight had received three wounds from B. and B. owned he had received his wounds fairly. (*Oneby’s* case,) 2 *Ld. Raym.* 1485. *S. C.* 2 *Stra.* 776. M. upon words of anger between him and Cofe, threw a bottle with great force at the head of C. and immediately drew his sword, C. returned another bottle with equal violence at M. and wounded him in the head. Thereupon M. stabbed C. This is murder, for M. in throwing the bottle, shewed an intention to do some great mischief; and his drawing immediately, shewed he intended to follow his blow; and it was lawful for C. when assaulted to return the bottle. *Kel.* 419. *Fost.* 274. 295-6, and affirmed to be law, by all the Judges, in *Oneby’s* case above cited. A. meets B. in the street, and immediately runs him through with a sword, or knocks out his brains with a hammer, or bottle; it is murder, though angry words had passed between them, for words are no provocation. And it settled, that if a man assaults another upon malice prepense, and after he driven by him to the wall, and kill him there in his own defence, it is murder in respect to his first intent, 2 *Ld. Raym.* 1488. *Kel.* 58, 60, 129. See *Sav.* 67. 1 *Hack.* (folio.) 81-2.

Upon the same principle, deliberate duelling, if death ensue, is, in the eye of the law, murder, for duels are generally founded in deep revenge. The punctilio called, falsely, *honour*, will not excuse, 1 *Roll. Rep.* 360. But if upon a sudden quarrel the parties fight upon the spot, or if they presently fetch their weapons, and go into the field and fight, and one of them falleth, it is only manslaughter, because it may be presumed the blood never cooled. It will be otherwise if they appoint to fight the next day, or even upon the same day, at such an interval, as that the passion might have subsided: or if from any

1790. circumstances attending the case, it may be reasonably concluded that their judgment had actually controuled the first transports of passion before they engaged. *Fort.* 257. 1 *Hale*, 452-3. 1 *Howe* (folio) 81. *Kel.* 27. 2 *Sira* 773. If there be a duel upon malice between A. and B. and C. be second to A. who kills B. it is murder in C. for he is present and aiding. 1 *Hawe* (folio) 82. 1 *Hale*, 443, 452-3. So, if there be a duel upon malice and C. attempts to part them, and is killed, it is murder, not in both, but only in him who strikes. See 1 *Hale*, 441. 2. 12 *Mod.* 631.

If A. with malice assaults the master, and in the quarrel kills the servant, it is murder. 1 *Hale*, 438. *Powd.* 101.

If A. intend to beat B. upon preconceived malice or anger, and death ensues, it will not be an excuse that he did not intend all the mischief that followed; for what he did, was *malum in se*, and he must be answerable for the consequences of it. It is murder or manslaughter, as the case may be. *Fort.* 253.

If a father, master, or schoolmaster, designeth moderate correction to his servant, child, &c. which the law alloweth him to use, and the servant &c. by some misfortune dieth thereof, this is not murder. But it seems, if the master designs an immoderate, or unreasonable correction, either in respect of the measure, manner, or instrument thereof, and the servant dies, it is murder if done with deliberation and design; or manslaughter, if done hastily, passionately, and without deliberation, with an instrument not likely to kill. 1 *Hale*, 454, 474. *Kel.* 64. 4 *Black. Com.* 199. *Fort.* 252. See 1 *Ld. Raym.* 144. *Greg.*, a blacksmith, upon words of heat, struck his apprentice suddenly on the head with a bar of iron. It is murder. A bar of iron is no instrument of correction. *Kel.* 64. See 1 *Ld. Raym.* 144. *Turner's* footman, not having cleaned his mistress's dogs, *Turner* struck him with a clog, of which stroke he died, held to be manslaughter only. The passion was sudden, and the instrument not likely to kill, cited in 1 *Ld. Raym.* 143. *Keepe* sent his servant to demand the key of his garden of *Wells* his gardener, who refused to deliver it; whereupon *K.* took down his sword, and went to the kitchen, and expostulated with *W.* who told him he might take the key if he would. *K.* then drew his sword, and struck *W.* upon his head, *W.* thereupon took the sword of a scythe, and pushed *K.* with it several times, which, said *Lord Holt*, was lawful for him to do. *K.* retired to the door, and killed *W.* with his sword, this seems to be murder; a

sword is not a proper instrument of correction. 1 *Ld. Raym.* 144. S. C. 5 *Mod.* 287.

It is settled, that words, how grating and offensive soever they may be, are not a sufficient provocation in the eye of the law, (though blows are) to lessen the crime into manslaughter, 5 *Burr.* 2796. *Ld. Raym.* 144, 1298, 1488. *Fort.* 290. 316. *Kel.* 55, 65, 130. 1 *Hawk.* (folio) 82. *Cro. El.* 779. 1 *Sid.* 277. 1 *Ler.* 180. 1 *Hale*, 456. See *Hob.* 120-1. 316. But, 1 *Jones* 432, seems contrary, but the case is doubted by *Lord Holt*, in *Kel.* 131-2. But if a person so provoked, had beaten the other only in such a manner, that it might plainly appear, he meant not to kill, but only chastise him, or restrained himself till the other had put himself upon his guard, and fought and killed him, it would be manslaughter only. 1 *Hawk.* (folio) 82, recognized as law by *Foster*, 290-1. *Kel.* 150-1. 1 *Hale*, 456.

When a man does an unlawful act, and death ensues, it is murder; as if a man rob an orchard, and being rebuked by the owner, kills him. So, if a man commits a riot, and in doing it, another is killed. Divers come to commit a riotous, unlawful act, in pursuit of which, one of them commits murder or manslaughter, all are guilty. 1 *Hale*, 442, 463. Divers come to steal deer in a park, the park-keeper shot at them; they fled, he pursued, they returned and killed the park-keeper, held to be murder in all, *Palmer* 35. The law presumes they came with intent to oppose all that should hinder their design, *ib.* See 1 *Hale*, 439, 443, 465. *Sav.* 67. So, if A. begins a riot, which continues for an hour, and then B. is killed by another, it will be murder in A. 1 *Salk.* 334-5, see 12 *Mod.* 630-1. So, if A. assaults B. to rob him, though without any precedent intention of killing him; yet if in the attempt, whether B. resists or not, A. kills him, it is murder, 1 *Hale*, 465. 3 *Inst.* 52. If A. commands B. to beat C. and he beats him so that he dies thereof, it is murder in B. and A. if present, is principal, if absent, accessory. 1 *Hale*, 435, 440. But to render it murder, the killing must be in pursuit of that unlawful act they were all engaged in. Thus, smugglers assemble to run wool; officers oppose: a smuggler fires a gun and kills another smuggler. If it does not appear that it was levelled at the officers, the other smugglers present are not guilty. For it does not appear it was in prosecution of the purpose for which they assembled. *Fort.* 552. 12 *Mod.* 627. So, divers committing an unlawful act, one

of them meets with D. with whom he had a former quarrel, and kills him, the rest are not guilty, for it was not within the compass of their original intention. 1 *Hale*, 443-4. Three soldiers go to rob an orchard, two get up the tree, the third stands at the gate with a drawn sword; the owner's son comes and seizes him; he stabs him. Those in the tree are not guilty, otherwise, if they had come with a general resolution against all opposers, which may be collected from their number, arms, or behaviour, at, or before. *Fost.* 353.

If persons assemble for a lawful act, and prosecute it lawfully, and one is killed, none are guilty but those who actually aided or abetted in the facts. *Fost.* 354.

If an affray be made in the night, and the constable, or any other who comes to his aid, be killed, it is murder. For when the constable commands the peace, although they do not know him to be the constable, yet at their peril they ought to obey him. If one kills a watchman, constable, &c. in the execution of his office, or a sheriff, or any of his officers, in the lawful execution of civil process, he is guilty of murder. The law implies malice, and the indictment need not be special. 9 *Rep.* 66-68. b. a. 4 *Rep.* 40. 41. a 1 *Hawk.* (folio) 86. *Fost.* 137. (where it is said this rule is founded on the policy of the law, and upon every principle of government) ib. 270. 308-9 ~318. 321. 2 *Ld. Raym.* 1299. *Sav.* 67. 3. *Inst.* 52. 1 *Hale*. 457. 460--2--3. *Kel.* 66.—Though the process be apparently erroneous, provided it be not defective in the frame of it, and issue in the ordinary course of justice from a court or magistrate having jurisdiction in the case; and though the officer did not tell him for what cause he arrested him, or did not show his warrant, which a known officer is not bound to do, nor a special one without demand; or though the arrest was in the night, yet if the minister of justice in the execution of it be killed, it is murder. 9 *Rep.* 68. a. *Fost.* 311. —1 *Hawk.* (folio) 86.—As in case of a warrant from a justice of the peace, in a matter wherein he hath jurisdiction, though the warrant was obtained by gross imposition on the magistrate, and false information touching the matters suggested in it. (*Curtis's case*) *Fost.* 135-312.—1. *Hale*. 460.—But if the process be defective in the frame of it, as if there be a mistake in the name or addition of the person on whom it is to be executed; or if the name of such person, or of the officer, be inserted without authority, and after the issuing the process, this will amount to no more than manslaughter in the person whose liberty is invaded.

ed. Fost. 312. 1 *Hale*, 457--8. 1 *Hawk.* (folio) 86. *Dyer*, 88. (in margin) 1 *Jones*, 346. *Cro. Car.* 371--2. If the officer exceeded the limits of his authority (*Fost.* 312.) or execute his office, or a legal warrant, in an irregular and unlawful manner, as by breaking open a door or window to arrest a man, which is unlawful, or if he arrest a man upon an ill warrant, or if he takes up a person in the night without any just ground of suspicion, whether in his jurisdiction or not, and the officer is killed, it is but manslaughter. *Cro. Car.* 537--8. 2 *Ld. Raym.* 1301--2. *March* 4. 1 *Hawk.* 86. If a private man be killed in endeavouring to part those whom he sees fighting, if he gives notice of his intention, it is murder in the slayer. 1 *Hawk.* 84. see *Kel.* 66. 1 *Hale*, 461. And it has been held (*Gooley's case*) that if a person is unlawfully deprived of his liberty, a stranger may attempt his rescue, and if he kills, it is manslaughter only; for that when the liberty of the subject is invaded, it is a provocation to all the subjects of England. 2. *Ld. Raym.* 1296. But this case is considered with great learning by judge *Foster*, and may be reasonably doubted. He says that doctrine has a fatal tendency to loosen the reigns of government, by giving an undue countenance to a spirit of popular opposition, upon principles of false patriotism. *Fost.* 312. 317. see *Hopkin Hugget's case*. *Kel.* 59. 62. 137. 1 *Hawk.* 26. § 54. In the case of private persons endeavouring to bring felons to justice, they must take care that a felony hath been actually committed; for if none hath been committed, or supposing one has been committed, but not by the person arrested, or pursued upon suspicion; if the person endeavouring to arrest, kills, he will not be excused from the guilt of manslaughter; nor will it amount to murder, if the pursuer himself be killed. But if A. a peace officer, has a warrant to apprehend B. by name, for felony, or B. is indicted for felony, or the hue and cry raised against him by name, and he, though innocent, flies or resists, and A. or any assisting him, is killed by B. or any of his accomplices, joining in that outrage, it is murder. And all this doctrine is established upon an undoubted principle of a justice due to the community, founded in the interest every individual hath in the public tranquillity, which once destroyed, all private rights will sink and be absorbed in the general wreck. *Fost.* 317--18. 1 *Hale* 490.

In proceeding to give the general outline of manslaughter, it is necessary to notice the statute, commonly called the "statute of stabbing."

By the statute of 1 *James* 1. c. 8. any

1790. who stabs a person, not having a weapon drawn, nor first stricken, so that he die in six months, though malice aforethought cannot be proved, is ousted of clergy.

This statute is said to have been made on account of the frequent quarrels and stabbings, with short daggers, between the Scotch and the English, at the accession of *James* the first, and being therefore of a temporary nature, ought to have expired with the mischief which it meant to remedy. 4 *Black. Com.* 193.

This statute was adopted as the law of *Pennsylvania*, by the 9th section of the act of 1718. vol. 1. pa. 114.

It is generally held that this statute is but declaratory of the common law. *Kel.* 55. 1 *Hawk.* (folio) 77. *Post.* 298. And if the offence be barely manslaughter at common law, the prisoner is rarely convicted on the statute. *ib.* 299. And though the indictment be upon the statute, the jury may find manslaughter generally, nor need it conclude "against the form of the statute, though it is well enough if so laid. 1 *Hawk.* 77. 1 *Hale*, 468. The statute does not extend to persons present, who do not stab. Therefore if it cannot be proved by whom the stroke was given, none can be found guilty within the statute. *ib.* & 2 *Hale*, 344. *Style*, 86. *Salk.* 542. It was once held by eleven judges, that not having first struck, means not having given the first blow in the affray. 1 *Jones*, 340." But, in the opinion of *Holt*, against the natural order of the words, and the obvious meaning of the act. *Post.* 301. But it seems settled, that wherever a person, who happens to kill another, was struck by him in the quarrel, before he gave the mortal wound, he is out of the statute, though he himself gave the first blow. 1 *Hawk.* 77. A cudgel, or other thing proper for defence or annoyance in the hand of the party, is a weapon drawn. *Post.* 300. So, throwing a pot, or other dangerous weapon at the party, is within the equity of the words "having a weapon drawn." 1 *Hawk.* 77. 3 *Lev.* 236. So, throwing a candlestick. *Style*, 83. A person in a passion throwing a hammer at another, is not within the statute. 1 *Hale*, 469. *Post.* 300. 1 *Hawk.* 77. 1 *Jones*, 433. *Style*, 469. *Kel.* 151-2. Throwing a pistol, sending an arrow from a bow, a stone from a sling, or striking with a staff, or blunt weapon, is not stabbing within the statute. *Post.* 300. So, stabbing with a tobacco pipe. *Style*, 468. But this statute does not extend to a husband stabbing an adulterer found in the fact, nor to a man assaulted by thieves in his house, *ib.* 469: nor to one, who on surprise suddenly stabbed a officer, who pushed into his chamber

early in the morning, abruptly and violently to arrest him, not telling his business, nor using words of arrest. 1 *Hale*, 470. Nor, if one concealed in a closet, but no thief, is stabbed on a sudden outcry of thieves, in the night time, *ib.* 42. 474. *Cro. Car.* 538. 1 *Jones*, 429. *Post.* 298-9.

But by the act of the 22d of April, 1794, the punishment of death is taken away from this offence, and it is now no more than voluntary manslaughter.

Manslaughter is a killing which happens, either on a sudden quarrel, or in the commission of an unlawful act, and without any deliberate intention of doing any mischief at all. And being done without malice prepense, there can be no accessories before the fact. 1 *Hawk.* (folio) 76. See 3. *Inst.* 55. It is to human frailty alone, that the law indulgeth in every case of felonious homicide. Therefore it ought to be remembered, that in all cases of homicide upon slight provocation, if it can be collected from the circumstances, that the party intended to kill, or to do some great bodily harm, it will be murder. The mischief is irreparable, and the outrage is considered as flowing rather from brutal rage, or diabolical malignity, than from human frailty. Thus, *A.* finding a trespasser upon his land, in the first transport of passion, beats, and happens to kill him, it is but manslaughter; but if he had knocked out his brains with a billet, or hedge stake, or beat him outrageously, beyond the bounds of a sudden resentment, it would have been murder. *Post.* 291. If *A.* in the prosecution of an act, *malum in se*, though without intention of bodily harm to any person, happens to kill, it will be murder or manslaughter, as the case may be. If done in prosecution of a felonious intention, it will be murder; if the intent was only to commit a trespass, manslaughter only. Thus, *A.* shooteth at the poultry of *B.* and by accident killeth a man; if his intention was to steal the poultry, which may be collected from circumstances, it will be murder; but if done wantonly, without that intent, barely manslaughter. *Post.* 258-9. 3 *Inst.* 56. *Kel.* 117. A man at the diversion of cock throwing at *Shrove-tide*, missed his aim and killed a child. It was held to be manslaughter. It is a barbarous custom, productive of great disorder, and dangerous to the bystanders. *Post.* 251. If on words arising in the street, a woman strikes a man in the street with an iron patten, and draws much blood, and he gives her a blow on the breast with the pommel of his sword; she flies, he pursues her, and stabs her in the back, it is but manslaughter. (*Sedman's case.*) The smart

of the man's wound, and the effusion of the blood, might possibly keep his indignation boiling to the moment of the fact. *Post.* 292. Two bailiffs, who killed a prisoner, (*Mr. Luttrell*) in his own house, by giving him nine wounds with a sword, and shooting him with a pistol when he was fallen on the ground, were found guilty of manslaughter only, because it appeared he had given one of them a blow with his cane; that his sword was drawn and broken, (*how*, did not appear) that he had brought the pistols in the room, and declared he would not be forced out of his lodgings. Both the officers were slightly wounded. (*Reason and Tranter's case.*) 1 *Str.* 499. *Post.* 292-3. If the captain of a ship has a press warrant, directing that no person but a *commission* officer is to execute it, and his name to be inserted on the back of it; and he accordingly appoints his lieutenant, who *stays in the ship*, and the captain sends his boat with some of the crew, to press; and some leagues off they board a ship, and attempt to press, and one of them is killed, it is only manslaughter, for they did not act according to the warrant. *Post.* 154. Two boys fought, and he who was beat, ran home all bloody, and complained to his father, who run three quarters of a mile, and beat the other boy, of which beating he died. It was ruled to be manslaughter, because done in a sudden heat and passion, and with a small cudgel or rod, not likely to kill. (*Rowley's case.*) 12 *Rep.* 87. *Cro. Jac.* 296. 1 *Hale.* 453. 2 *Ld. Raym.* 1498. *Post.* 294-5. 1 *Hawk.* (folio) 83. Divers playing at *bowls*, two of them fell out and quarrelled; the third who had not any quarrel, in revenge of his friend, struck the other with a *bowl*, of which stroke he died. Being done upon a sudden motion, in revenge of his friend, ruled to be only manslaughter. 12 *Rep.* 87. If two fight, and one of them breaks his sword, and a stranger gives him another, with which he kills his adversary. It is manslaughter in both. *Com. Dig.* *A.* seeing two fight together on a private quarrel, whether sudden or malicious, takes part with one of them, and kills the other; it is but manslaughter. 1 *Hawk.* (folio) 82. *A.* useth provoking language or behaviour towards *B.* *B.* striketh him, upon which a combat ensues, in which *A.* is killed: it is but manslaughter; for it was a sudden affray, and they fought upon equal terms. And upon such combats, upon sudden quarrels, it matters not who gave the first blow: for according to the proverb, the *second blow* makes the affray. 1 *Hale.* 456. *Post.* 277. 295. *A.* came home drunk, his father or-

dered him to bed; he refused; a scuffle ensued; *B.* another son, got out of bed, threw *A.* on the ground and beat him; *A.* in the strife, wounded *B.* with a penknife, and he died. Ruled to be but manslaughter. (*Navitor's case.*) *Post.* 278. If two meet together, and striving for the wall, the one kills the other; this is manslaughter and felony. And so it is, if they had upon that sudden occasion, gone into the field and fought, and the one had killed the other: this had been but a manslaughter and no murder, because all that followed was but a continuance of the first sudden occasion; and the heat of blood, kindled by ire was never cooled till the blow was given, and so in similar cases. 3 *Inst.* 55. 1 *Hale.* 455-6. So it would be, if *A.* riding on the road, *B.* had whipped the horse of *A.* out of the track, and then *A.* had alighted and killed *B.* *ib.* A gentleman coming to town in a chaise, before he alighted discharged his pistols, and by accident killed a woman. It was ruled to be manslaughter. 1 *Str.* 481. If one draws upon another in a sudden quarrel, but makes no pass at him till his sword is drawn, and then fights with him and kills him, it is but manslaughter; for he gave his adversary time to defend himself, and be upon his guard. *Post.* 295. *Kel.* 130. 2 *Ld. Raym.* 1493. Neither can he be thought guilty of a greater crime, who finding a man in bed with his wife, or being actually struck by him, or pulled by the nose, or flippered on the forehead, immediately kills him. So, defending his person from an unlawful arrest, or his house against persons attempting to enter it forcibly, &c. 1 *Hawk.* (folio) 81-2-3.

From this outline, the remark of *Mr. Bradford*, in his Inquiry, pa. 41. will appear to be correct. Manslaughter, he says, as explained in our law books, is exceedingly comprehensive in its nature. While its deepest shades partake of the hue of murder, its lightest are faintly tinged with the feeble colours of carelessness and inadvertence.

Homicide occasioned by accident, improperly called *chance medley*, is, where a man doing a lawful act, without intention of bodily harm to any person, but not using proper caution, unfortunately happens to kill. *Post.* 258. 3 *Inst.* 56. 1 *Hawk.* (folio) 73. 1 *Hale.* 472.

Death ensuing from accidents happening at sports and recreations, such recreations being innocent and allowable, fall within the rule of excusable homicide. *Post.* 259. 1 *Hawk.* (folio) 74. But it is not sufficient that the act upon which death ensueth, be lawful or innocent; it must be done in a proper man-

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ner, and with due caution to prevent mischief. *Post.* 262. If the act from which death ensues be not *malum in se*, but only *malum prohibitum*, as if an unqualified person shoot at game, and by accident kills a man, this will not enhance the accident beyond its intrinsic moment. *ib.* 259. 1 *Hale.* 475-6. If a person be cutting wood, and the head of the axe flies off and kills a man, it is homicide *per infortunium* only. *ib.* 472. If workmen throw stones, timber, rubbish, &c. from an house in the ordinary course of their business, and kill, if they gave timely warning, it will be but accidental death; if not, it is manslaughter at least. *ib.* 472-5. *Post.* 262. But if done in a populous town or street, it will be manslaughter notwithstanding such warning, unless it be done very early in the morning, when few people are stirring. *Post.* 263. 1 *Hale.* 475. *Kel.* 40. See 1 *Hawk.* (folio) 74. If a man drawing a cart, &c. kills, if he had notice of the mischief likely to ensue, and yet drove on, it will be murder; if done through heedlessness and want of due circumspection, it will be manslaughter; if he took all due care, it is but accidental death. *Post.* 263. 1 *Hale.* 476. If a man whip a horse on which another is riding, whereupon he springs out, and runs over a child and kills him, the rider is guilty of homicide *per infortunium*, the other of manslaughter. *ib.* A man found a pistol in the street, which he had reason to believe was not loaded, having tried it with the rammer; he carried it home and showed it to his wife, and she standing before him, he pulled up the cock and touched the trigger, the pistol went off and killed the woman. This was ruled to be manslaughter. *Kel.* 41. But, in the opinion of *Foster*, a hard and illegal judgment. *Post.* 263-4. A man went with his wife on a Sunday to dine at a friend's house, carried a gun in hopes of sport, discharged it before dinner, set it in a private place, dined, went to church, and in the evening returned with his wife and neighbours. The gun had been loaded by another during his absence, and he ignorant of what had passed, took up the gun, touched the trigger, and killed his wife, whom he tenderly loved, and he was acquitted. *Post.* 265. But regularly, if the act which occasions the death of a man, be a trespass, or cannot but be attended with the manifest danger of hurt to some man, or be of such a nature, that it cannot be used without manifest hazard of life, and there were no deliberate intent of mischief, the killing is esteemed manslaughter. Thus, shooting at deer in a third person's park, throwing stones at ano-

ther wantonly, at play, or by parrying with naked swords, covered with buttons at the points, or with swords in the scabbards. 1 *Hale.* 472-3. 1 *Hawk.* (folio) 75. See *Post.* 260-1.

Homicide in advancement of justice may be considered as founded in necessity, for the ends of government will be totally defeated, unless persons can, in a due course of law, be made amenable to justice, and therefore, where persons having authority to arrest or imprison, using the proper means for that purpose, are resisted in so doing, and the party making resistance is killed in the struggle, this homicide is justifiable; and on the other hand, if the party having authority to arrest or imprison, using the proper means, happeneth to be killed, it will be murder in all who take a part in such resistance; for it is homicide committed in despite of the justice of the kingdom. This rule supposes that resistance is made, and upon that supposition will hold in all cases, civil or criminal. For in case of resistance in either case, the party having authority to arrest or imprison, may repel force by force, and if death ensue in the struggle, he will be justified. This is founded in reason and public utility; for few men will quietly submit to an arrest, if in every case of resistance, the party empowered to arrest was obliged to desist, and leave the business undone. The case of *bare flight* in order to avoid an arrest in a civil proceeding, and likewise in some cases of a criminal nature, will fall under a different consideration. A defendant in a civil suit being apprehensive of an arrest, *flies*, the officer pursueth, and in the pursuit killeth him, *this*, says lord *Hale*, (1 *Hale.* 481.) *will be murder*. *Foster* says, murder or manslaughter; as circumstances may vary the case. For if the officer in the heat of pursuit, and merely in order to overtake the defendant, should trip up his heels, or give him a stroke with an ordinary cudgel, or other weapon *not likely to kill*, and death should unhappily ensue, it will amount to no more than manslaughter, if, in some cases, even to that offence. The blood was heated in the pursuit, his prey, a *lawful prey*, just within his reach, and no signal mischief was intended. But had he made use of a deadly weapon, it would have amounted to murder. The mischievous vindictive spirit, which always must be collected from circumstances, determines the nature of the offence. The law is the same in case of a mere breach of the peace, or any other misdemeanor short of felony. But where felony is committed, and the felon *flies from justice*, or a dangerous

wound is given, it is the duty of every man to use his best endeavours for preventing an escape; and if in the pursuit the party flying is killed, *where he cannot be otherwise overtaken*, this will be deemed justifiable homicide; for the pursuit was not barely warrantable, it is what the law requires, and will punish the wilful neglect of. It is the duty of every man in these cases quietly to yield himself up to the justice of his country. And for this reason it is, that flight alone upon a charge of felony, induces a forfeiture of goods, though the party upon his trial may be acquitted of the fact. For he hath done what in him lay, to stop the course of public justice. These rules are founded in public utility, that crimes may not remain unpunished. And if in the cases last mentioned, the felon, or person giving a dangerous wound, turns upon the pursuers, and in the scuffle any one of them is killed, this will be murder in the person so resisting, and all his adherents present and knowingly abetting. See *Fost.* 270-1-2.

Self defence naturally falls under the head of homicide founded in necessity, and may be considered in two different views: 1. homicide, *se et sua defendendo*, which is perfectly innocent and justifiable. 2. That which is in some measure, blameable and barely excusable.

No place can be so sacred as to deprive a man of his right of self defence, and oblige him to yield himself a tame sacrifice. Such passive conduct would, in fact, make him criminal in the highest degree; for should he neglect to defend himself, he would become a *felo de se*. The law of nature which dictates self preservation, is so powerful, that it supersedes all other laws, and an attempt to restrain it, is absurd and inefficacious. *Dagge*, on crim. law. chap. 8. § 1.

In the case of justifiable self defence, the injured party may repel force by force in defence of his person, habitation or property, against any one who manifestly intends, and endeavours by violence or surprize to commit a known felony, upon either. In these cases he is not obliged to retreat, but may pursue his adversary till he finds himself out of danger, and if in a conflict between them he happens to kill, such killing is justifiable. *Act.* 128-9. Even his servant, then attendant on him, or any other person present, may interpose for preventing mischief. 1 *Hule.* 481. 484. In this case nature and social duty co-operate. A woman in defence of her chastity may lawfully kill a person attempting to commit a rape upon her. The injury intend-

ed can never be repaired or forgotten; and nature, to render the sex amiable, hath implanted in the female heart, a quick sense of honour, the pride of virtue, which kindles and inflames at every such instance of brutal lust. Here the law of self defence plainly co-operates with the dictates of nature. See 1 *Hule.* 485. An attempt is made to commit arson or burglary in the habitation; the owner or any part of his family, or even a lodger with him, may lawfully kill the assailants for preventing the mischief intended. *Cro. Car.* 544. See *Fost.* 273 --4.

Culpable, and through the benignity of the law, *excusable*, self defence, borders very nearly upon manslaughter, and in fact and experience, the boundaries are in some instances, scarce perceivable; but in consideration of law they have been fixed. In both cases it is supposed, that passion hath kindled on each side, and blows have passed between the parties. But in the case of manslaughter, it is either presumed, that the combat on both sides hath continued to the time the mortal stroke was given, or that the party giving such stroke was not at that time in imminent danger of death. He, therefore, who, in the case of a mutual conflict would excuse himself upon the foot of self defence, must show, that before a mortal stroke given, he had declined any farther combat, and retreated as far as he could with safety; and also that he killed his adversary through mere necessity, and to avoid immediate death. If he fails in either of these circumstances, he will incur the penalties of manslaughter. Thus (1 *Hale* 479.) *A.* being assaulted by *B.* returns the blow, and a fight ensues. *A.* before a mortal wound given, declines any farther conflict, and retreats as far as he can with safety, and then, in his own defence, kills *B.* this is *excusable* self defence, though *A.* had given several blows, *not mortal*, before. But if the mortal stroke had been first given, it would have been manslaughter. The cases here put, suppose that the first assault was made upon the party who killed in his own defence. But, as in the case of manslaughter upon sudden provocations, where the parties fight on equal terms, all malice apart, it matters not who gave the first blow; so, in this case of excusable self defence, the first assault in a sudden affray, all malice apart, will make no difference, *if either party quits the combat and retreats before a mortal wound be given*. But if the first assault be upon malice, which must be collected from circumstances, and the assailant, to give some colour for putting in exe-

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cution the wicked purposes of his heart, retreats and then turns and kills, this will be murder. If he had killed without retreating, it would undoubtedly have been so; and the craft of flying rather aggravates than excuses, as it is a fresh indication of the malice already mentioned, the heart deliberately bent upon mischief. The other circumstance necessary to be proved in a plea of self defence, is, that the fact was done from mere necessity, and to avoid immediate death: as in *Nailor's* case, before cited, who, coming home drunk, was ordered to bed by his father, and in a scuffle stabbed his brother with a penknife. It was ruled to be manslaughter, for there did not appear to be any inevitable necessity so as to excuse the killing in this manner; the deceased did not appear to aim at the prisoner's life, but rather to chastise him for his misbehaviour and insolence towards his father. See *Post*. 276-7-8. But though the party assaulted must flee as far as he can, either by reason of some wall, ditch, or other impediment; yet the assault may be so fierce as not to allow him to yield a step, without manifest danger of his life, or enormous bodily harm; and then in his defence he may kill his assailant instantly. And this is the doctrine of universal justice, as well as of the municipal law. And, as the manner of the defence, so is also the time to be considered; for if the person assaulted does not fall upon the aggressor till the affray is over, or when he is running away, this is revenge, and not defence. Under this excuse of self defence, the principal civil and natural relations are comprehended; therefore master and servant, parent and child, husband and wife, killing an assailant in the necessary defence of each other respectively, are excused; the act of the relation assisting being construed the same as the act of the party himself. See 4 *Black. Com.* 183-6.

In justifiable homicide, the party is to be dismissed without any forfeiture. So, in the case of death by casualty, by the constitution of the commonwealth; which, by benign interpretation, might be construed to extend beyond the obsolete forfeiture of *droodand*. To the case of a *felô de se*, it is expressly extended. But the commonwealth seeks not forfeitures; nor in any case could they be extended beyond the life of the offender. From manslaughter, the forfeiture was removed by act of 8th March, 1780. (Chap. 878. § 4.) except in cases of stabbing; and imprisonment substituted.

On an indictment of murder, the party offending may be acquitted of murder, and yet be found guilty of man-

slaughter; but the jury are not compellable so to do. *Cro. El.* 276. (464-5.)

In every charge of murder, the fact of killing being first proved, all the circumstances of accident, necessity, or infirmity, are to be satisfactorily proved by the prisoner, unless they arise out of the evidence proved against him. For the law presumes the fact to have been founded in malice, until the contrary appears. And when the question is, whether the homicide was committed wilfully and maliciously, or under circumstances, justifying, excusing or alleviating, it is the proper and only province of the jury, to find whether the facts alleged by way of justification, excuse or alleviation, are true. But supposing them true, whether such homicide be justified, excused or alleviated, must be submitted to the judgment of the court. For on a special verdict, the court are judges of the malice, and whether there was time to cool, or the act be deliberate, or not, and not the jury. 2 *Stra.* 773. 2 *Ld. Raym.* 1493. But this doctrine, in this extent, is not adapted to the climate of *Pennsylvania*. The jury may, and do, give general verdicts, judging both of the fact and the law. It is true the court direct in matter of law; and such also is the English practice. See *Post*. 255. 280.

No one can excuse the killing of another, by setting forth in a special plea, that he did it by misadventure, or self defence; but he must plead not guilty, and give the special matter in evidence. 1 *Hawk.* (folio) 76. *Co. Lit.* 283. a.

The act of Assembly of the 23d of April, 1794, makes no other alteration in this law, than to distinguish the shades, or degrees of crime, and apportion the punishment. Thus, all murder, which shall be perpetrated by means of poison, or by lying in wait, or by any other kind of wilful, deliberate, and premeditated killing, or which shall be committed in the perpetration, or attempt to perpetrate, any arson, rape, robbery, or burglary, shall be deemed murder of the first degree, and shall be punished with death. All other kinds of murder shall be deemed murder of the second degree, and shall be punished by imprisonment and hard labour, in the gaol and penitentiary house of *Philadelphia*, for a period not less than five years, nor more than eighteen years: but on conviction of a second offence of murder in the second degree, the imprisonment at hard labour shall be during life.

By this act, murder is the first degree, by poison, arson, rape, robbery, or burglary, is precisely defined; by lying in wait, not certainly, but reasonably so; but all

other kinds of wilful, deliberate, and premeditated killing, are left to construction upon circumstances, by the correct, but benevolent principles of the common law. The jury, under the direction of the court, must ascertain it. Upon temperate unimpassioned reflection, they can seldom err. Cases of *implied* malice, are not excluded. *Poison* implies malice. In this crime peculiarly, the circumstances attending the case generally betray the motives of the heart. Has the fact been attended with such circumstances, as carry in them the plain indications of an heart regardless of social duty, and fatally bent on mischief? He who carried his sick father against his will, from town to town, in a cold and frosty season, so that he died;—The mother who laid her infant in a hogstye, that it might be devoured;—The gaoler, who by oppression of a prisoner in his power, extinguishes life, by protracted, unrelenting severity; are not these cases in which deliberation and cruelty concur, flowing from a wicked heart, a mind grievously depraved, and acting from motives highly criminal? It is with a view to the act of 1794, that the editor, in this outline, has drawn the cases together with considerable labour, to enable those who are not of the profession, to judge for themselves, and to distinguish, on a subject deeply interesting to the whole community. Who can wish the outline to be filled up, or enlarged by new cases? who can wish that all the distinctions or discriminations of which the act may be susceptible, may be marked hereafter by judicial decisions? Thrice happy for the commonwealth, should it remain on our statute book, a dead letter, and accumulate the rust of ages!

All murder which follows felonious acts, which were not formerly capital crimes; of which numerous instances have been given, or in consequence of offensive language, which has been deemed to be no provocation, and the murder not premeditated, or on revenge *predetermined*; or in consequence of acts prohibited by law, called *mala prohibita*; in consequence of riots and unlawful assemblies; in consequence of trespasses committed upon the property or possession of another; in all similar cases where it is evident there has been no precedent intention to kill; and more particularly in cases closely bordering on manslaughter, will be but murder in the *second* degree, and according to the shade or colour of the offence, in the sound discretion of the court, the punishment may be apportioned by imprisonment and hard labour, between five and eighteen years.

Concealment of the death of bastard children, according to the circumstances of the case, may be punished by imprisonment at hard labour for any time not exceeding five years; or as a misdemeanor.

Voluntary manslaughter which the act does not define, but leaves it to the common law, includes that class of cases formerly punished with death under the statute of *stabbing*; killing on a sudden quarrel, or in consequence of reasonable provocation, or in consequence of an assault, under circumstances which would not excuse upon the principles of self defence, shall be punished by imprisonment at hard labour, in the gaol and penitentiary house of *Philadelphia*, for any time not less than two, nor more than ten years, leaving a discretion to apportion it according to the circumstances, and to give security for good behaviour during life, or for any less time. And for the second offence, the imprisonment &c. not to be less than six, nor more than fourteen years.

Involuntary manslaughter, happening in consequence of an *unlawful* act, may, with the leave of the court, be charged as a misdemeanor, and the felony waived, and on conviction, the party be fined and imprisoned as in cases of misdemeanor, or both offences may be charged in the same indictment, and the jury may acquit him of one and find him guilty of the other charge. If it happen in consequence of a civil trespass, it should be charged as manslaughter. But where the crime "is faintly tinged with the feeble colours of carelessness and inadvertence," there will be enough of severity in its punishment as a misdemeanor.

All the remaining branches of homicide are left as they were, save only that the forfeiture anciently attending them, may be considered as removed.

MAYHEM.

Mayhem, is the violently depriving another of the use of such of his members as may render him the less able in fighting, either to defend himself or annoy his adversary. And therefore the cutting off or disabling, or weakening a man's hand or finger, or striking out his eye or fore-tooth, or depriving him of those parts, the loss of which, in all animals, abates their courage, are held to be *mayhems*. But cutting off the ear, or nose, or the like, were not held to be *mayhems* at common law, because they do not weaken, but only disfigure.

By the statute of 22d & 23d *Charles* 2d. c. 1. called the *Coventry* act, being occasioned by an assault on sir *John Coventry*, in the street, and slitting his nose

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in revenge (as was supposed) for some obnoxious words uttered by him in Parliament, it is enacted, that "if any person shall of *malice aforethought*, and by *lying in wait*, unlawfully cut out or disable the tongue, put out an eye, slit the nose, cut off a nose or lip, or cut off or disable any limb or member of any other person, *with intent to maim or disfigure him*, such person, his counsellors, aiders and abettors, shall be guilty of felony, without benefit of clergy." This statute was adopted in the same terms by our act of 1718, "and the persons so offending, their counsellors, &c. knowing of and privy to the offence, shall suffer death as in cases of felony, without benefit of clergy." Vol. 1. pa. 114.

It was held, on an indictment against one *Coke*, for slitting the nose of one *Crispe*, (intending to murder him) and who had the effrontery to rest his defence upon this point, that the assault was committed with an intent to murder, (which is no felony) and not with an intent to disfigure, and therefore not within the statute: that if a man attacks another to murder him, with such an instrument as a hedge bill, which cannot but endanger the disfiguring him; and in such attack, happens not to kill, but only to disfigure him, he may be indicted on this statute, and it shall be left to the jury whether it were not a design to murder by disfiguring, and consequently a malicious intent to disfigure, as well as to murder. See 4 *Black. Com.* 205 --7.

The sixth section of the act of 22d of April, 1794. re-enacts the above, and further includes the criminal act punished by the English statute of 37 *Hen.* 8. c. 6. of maliciously and unlawfully cutting off the *ear*; and this further addition of "voluntarily, maliciously, and of purpose, pulling or putting out an eye, while fighting or otherwise; and, abolishing the punishment of death, punishes the offender with a confinement at hard labour in the gaol and penitentiary house of Philadelphia, for any time not less than two, nor more than ten years; and also to pay a fine not exceeding one thousand dollars, three fourths whereof shall be for the use of the party grieved.

RAPE.

Rape is another of the private felonies against the body of the subject. The statute of 18th of *Elizabeth*, excluded it from the benefit of clergy. This punishment of death was adopted in Pennsylvania by the 7th section of the act of 1718 vol. 1. pa. 113. It is defined to be, "the carnal knowledge of a woman for-

cibly, and against her will." The subject, says *Blackstone*, is highly improper to be publicly discussed, except only in a court of justice. Nothing more will therefore be added here. The nature of the crime is as well understood, as the crime itself is detected.

By the act of 22d of April, 1794. § 4. The punishment of this crime, or of being accessory thereto before the fact, is imprisonment at hard labour for a period not less than ten, nor more than twenty one years, in the gaol and penitentiary house of *Philadelphia*. For a second offence, by sect. 13. a similar imprisonment at hard labour, *during life*.

SODOMY, or B—GG—RY.

This is denominated the infamous *crime against nature*, committed either with man or beast; a crime which ought to be strictly or impartially proved, and then as strictly and impartially punished. But it is an offence of so dark a nature, so easily charged, and the negative so difficult to be proved, that the accusation should be clearly made out; for if false, it deserves a punishment inferior only to the crime itself.

This offence was made felony without benefit of clergy, by the statute of 25th *Henry* 8th. revived and confirmed by statute of 5th *Elizabeth*, c. 17. and incorporated into our law by the act of 1718. vol. 1, pa. 113.

By the act of 5th April, 1790, Every person convicted of this offence, or as accessory thereto before the fact, shall forfeit to the commonwealth all his lands and tenements, goods and chattels he possessed at the time the crime was committed, and at any time afterwards until conviction, and be sentenced to undergo a servitude of any term or time, at the discretion of the court, not exceeding ten years, at hard labour, &c. And by the act of 22d of April, 1794, the punishment for a second offence, is imprisonment at hard labour during life.

ARSON.

If any person or persons shall be convicted of maliciously and voluntarily burning the dwelling house, barn, stable, or out house of another, having corn or hay therein, he shall suffer death. Act of 1718, vol. 1. pa. 115.

By the act of 21st February, 1767. (vol. 1. pa. 272.) If any person shall maliciously and voluntarily burn the dwelling house, or any other house, barn or stable adjoining thereto, or any barn or out house, having corn or hay therein, although the same shall not be adjoining to such dwelling house, belonging to any

other, he shall suffer death without benefit of clergy.

By the act of 21st of March, 1772: If any person shall maliciously and voluntarily burn the state house, or any of the adjoining offices or buildings, or any church, meeting house, or other building for public worship, or any academy or school house, or library belonging to any body politic or corporate, he shall suffer death without benefit of clergy. Vol. 1. pa: 382.

But by the act of 23d of April, 1794: Every person duly convicted of this crime, or as being accessory thereto, shall be punished by imprisonment at hard labour, &c. for a period not less than five, nor more than twelve years: and for a second offence, during life.

And, by an act passed 21st March, 1806: (chap. 2637.) If any person shall wilfully *set fire* to any barn, stable or out house, or to any barrack, rick or stack of hay, grain or bark, *with intent to destroy the same*, or shall be an accessory before the fact, being thereof legally convicted, he shall suffer an imprisonment at hard labour in the jail and penitentiary house of *Philadelphia*, for any term not less than five years, nor more than twelve years, and pay a fine not exceeding two thousand dollars, at the discretion of the court.

The offence of arson may be committed by wilfully setting fire to one's own house, provided one's neighbour's house is thereby also burnt; but if no mischief is done but to one's own, it does not amount to felony, though the fire was kindled with intent to burn another's; for by the *common law*, no intention to commit a felony, amounts to the same crime, though it does in some cases by particular statutes. And in this case of arson, by the law of March, 1806, the *intent* to burn and destroy, evidenced by the particular act of *setting fire*, though not made felony, is a very high misdemeanour, and punishable with greater severity by this law, than an actual *arson*. The wilful firing one's own house *in a town*, is said to be a high misdemeanour, and punishable by fine, imprisonment and surety for good behaviour. And if a landlord, or reversioner, sets fire to his own house, of which another is in possession, under a lease from himself, or from those whose estate he hath, it shall be accounted arson; for, during the lease, the house is the property of the tenant. See 4 *Black. Com.* 221. *Fost.* 115.

BURGLARY.

By the act of 1718: If any person, or persons shall be convict of burglary, which is a breaking and entering into a

dwelling house of another in the night time, with an intent to kill some reasonable creature, or to commit some other felony within the same house, whether the felonious intent be executed or not, he or they so offending, within this province, being convicted thereof as aforesaid, shall suffer death without benefit of clergy. Vol. 1. pa: 115.

And, by an act of 21st of March, 1772: If any person shall break and enter the state house, or any of the adjoining offices or buildings, or any church, meeting house, or other building for public worship, or any academy or school house, or library belonging to any body politic or corporate, in the night time, with intent to commit a felony within the same, whether the felonious intent be executed or not, being thereof legally convicted, shall stand in the pillory, &c. have his ears cut off, &c. be publicly whipped, &c. and committed to the work house, or gaol of the county, &c. during the space of twelve months. Vol. 1. pa: 382.

But, by the act of 5th of April, 1790: Every person convicted of this offence, or as accessory thereto before the fact, shall forfeit to the commonwealth all his lands and tenements, goods and chattels, whereof he was seized or possessed at the time the crime was committed, and at any time afterwards until conviction, and be sentenced to imprisonment at hard labour for any time, at the discretion of the court, not exceeding ten years: and for such part of the offence formerly punished with death, for a second offence, imprisonment at hard labour during life, by the act of 23d of April, 1794. But by the 9th section of the act of 23d of September, 1791: The forfeiture shall extend only to the residue, after restitution made to the owner of goods and chattels stolen.

In the definition of Burglary, there are *four* things to be considered: the *time*, the *place*, the *manner*, and the *intent*.

1. The *time* must be by night, and not by day; for in the day time there is no burglary. If there is day light enough begun or left, to discern a man's face, it is no burglary. But this does not extend to moonlight; for then many midnight burglaries would go unpunished, and the malignity of the offence does not so properly arise from its being done in the dark, as at the dead of night, when all the creation, except beasts of prey, are at rest; when sleep has disarmed the owner, and rendered his castle defenceless.

2. As to the *place*. That is now described in our acts of Assembly. Exclu-

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sive of the offence described by the act of 1772, of an entry by night into *public* buildings with a felonious intent, and advertising only to the original act of 1718, which follows the English law: it seems indispensibly necessary to form its guilt, that it must be in a mansion or dwelling house. For no distant barn, warehouse, or the like, are under the same privileges, nor looked upon as a man's castle of defence; nor is a breaking open of houses wherein no man resides, and which therefore, for the time being are not mansion houses, attended with the same circumstances of midnight terror. A house however, where a man sometimes resides, and which the owner hath only left for a short season, with intention to return, is the object of burglary, though no one be in it at the time of the fact committed. And, if the barn, stable, or warehouse, be parcel of the mansion house, and within the same common fence, though not under the same roof, or contiguous, a burglary may be committed therein; for the capital house protects and privileges all its branches and appurtenances, if within the curtilage or homestall. A chamber in a college, is the mansion house of the owner; or a room or lodging in any private house, the mansion for the time being of the lodger, if the owner does not himself dwell in the house, or if he and the lodger enter by different outward doors: but not where they are merely inmates, and the apartments are but parcel of the owner's dwelling house. So, the house of a corporation, inhabited in separate apartments, by the officers of the body corporate, is the mansion house of the corporation, and not of the respective officers. But if one hires a shop, parcel of another man's house, and works or trades in it, but never lies there, it is no dwelling house, nor can burglary be committed therein; for by the lease it is severed from the rest of the house, and therefore it is not the dwelling house of him who occupies the other part; nor can he be said to dwell therein who never lies there. Nor can burglary be committed in a tent or booth erected in a market or fair, though the owner may lodge therein; for the law regards thus highly nothing but permanent edifices, and though it may be the choice of the owner to lodge in so fragile a tenement, yet his lodging there no more makes it a burglary to break it open, than it would be to uncover a tilted waggon in the same circumstances. See 4 *Black. Com.* 225-6.

3. As to the *manner*. There must be both a breaking and an entry to complete it. But they need not be both done

at once: for, if a hole be broken one night, and the same breakers enter the next night through the same, they are burglars. There must in general be an actual breaking, not a mere civil trespass (or leaping over ideal, invisible boundaries) but a substantial and forcible irruption. As, at least, by breaking; or taking out the glass of, or otherwise opening a window, picking a lock, or opening it with a key; lifting up the latch of a door, or unloosing any other fastening which the owner has provided. But if a person leaves his doors or windows open, it is his own folly and negligence; and if a man enters therein, it is no burglary; yet, if he afterwards unlocks an inner or chamber door, it is so. But to come down a chimney, is held a burglarious entry; for this is as much closed, as the nature of things will permit. So, to knock at a door, and upon opening it, to rush in with a felonious intent; or under pretence of taking lodging, to fall upon the landlord and rob him; or to procure a constable to gain admittance in order to search for traitors, and then to bind the constable and rob the house; all these entries have been adjudged burglarious, though there was no actual breaking, for the law will not suffer itself to be trifled with by such evasions, especially under the cloak of legal process. So, if a servant opens and enters his master's chamber door, with a felonious design, (1 *Str.* 481,) or if any other person lodging in the same house, or in a public inn, opens and enters another's door, with such evil intent, it is burglary. If the servant conspires with the robber, and let him into the house by night, this is burglary in both: (2 *Str.* 381.) for the servant is doing an unlawful act, and the opportunity afforded him of doing it with greater ease, rather aggravates than extenuates the guilt. As for the entry, any the least degree of it, with any part of the body, or with an instrument held in the hand, is sufficient; as, to step over the threshold, to put a hand or hook in at a window, to draw out goods, or a pistol to demand one's money, are all of them burglarious entries. And it is universally agreed, that there must be both a breaking, either in fact or by implication, and also an entry in order to complete the burglary. See 4 *Black. Com.* 226-7. *Fost.* 103-9.

4. As to the *intent*. Such breaking and entry must be with a *felonious* intent, otherwise it is only a trespass. And it is the same, and so is the act of assembly, whether such intention be actually carried into execution, or only demonstrated by some attempt or overt act, of

which the jury is to judge. And therefore such a breach and entry of a house as has been before described, by night, with intent to commit a robbery, a murder, a rape, or any other felony, is burglary, whether the thing be actually perpetrated or not. Nor does it make any difference, whether the offence were felony at common law, or only created so by statute; since that statute which makes an offence felony, gives it incidentally all the properties of a felony at common law. See 4 *Black. Com.* 237—8.

ROBBERY.

Robbery, which is done by assaulting another, on or *near* the highway, putting him in fear, and taking from his person money or other goods, to *any value* whatsoever, was to be punished by the act of 1718, as well the robber, as his counsellors, aiders, comforters and abettors, being lawfully convicted thereof, as felony, according to the tenor, direction, form and effect of the statutes, in such case made and provided, in Great Britain. Vol. 1, pa. 113.

This open and violent larciny from the person, agreeable to the above definition, was punished with death, and debarred the benefit of clergy, particularly by the statute of 23 *Henry 8*, c. 1.

The statute of 3 & 4 *William and Mary*, c. 9, took away clergy from both principals and accessories before the fact, in robbery wheresoever committed.

Corresponding to this latter statute, it is enacted by the act of 8th of March, 1780, that if any person or persons shall commit robbery, which robbery is done by assaulting another, putting him in fear, and taking from his person money or other goods, to any value whatsoever, whether the same robbery be committed on or near the highway, or *elsewhere*, in any place or places whatsoever, within this commonwealth, he or they so offending, his or their counsellors, aiders, comforters and abettors, being duly convicted or attainted, shall suffer as felons, without benefit of clergy, in like manner as by the laws of this commonwealth is provided in the case of robbers *on or near* the highway. Vol. 1, pa. 499.

But, by the second section of the act in the text, every person convicted of robbery, or as accessory thereto before the fact, shall forfeit to the commonwealth, his lands and tenements, goods and chattels, whereof he or she was seized or possessed at the time the crime was committed, and at any time afterwards until conviction, and undergo a servitude at hard labour for any time

not exceeding ten years, &c. And for a second offence, imprisonment at hard labour during life, by the act of 22d of April, 1794.

By the act of 23d of September, 1791, any person convicted of robbery or burglary, shall be ordered to restore to the lawful owner or owners the goods and chattels so stolen, or to pay to him or them, the full value thereof, or of so much thereof, as shall not be restored, and the forfeiture of his, her, or their lands or chattels, shall only extend to the residue thereof, after such restitution shall be made.

Concealers of robbers, &c. who were intitled to clergy by the act of 1718, are now to be punished by fine and imprisonment, by the 4th section of the act in the text. And by the act of 4th of April, 1807, (chap. 2805,) the imprisonment may be extended to any term not exceeding seven years, and the convict sent to the penitentiary house in *Philadelphia*, at the discretion of the court.

There must be a *taking*, otherwise it is no robbery. A mere attempt to rob, is but a misdemeanor, punishable by fine and imprisonment. If the thief, having once taken a purse, returns it, still it is a robbery; and so it is, whether the *taking* be strictly from the person of another, or in his presence only; as, where a robber by menaces and violence, puts a man in fear, and drives away his sheep, or his cattle before his face. But if the taking be not either directly from his person, or in his presence, it is no robbery. The taking must be by force, or a previous putting in fear, which is the criterion that distinguishes robbery from other larcinies. For, if one privately steals any money, &c. from the person of another, and afterwards keeps it by putting him in fear, this is no robbery, for the fear is subsequent. And though it is usual, it is not necessary to lay in the indictment, that the robbery was committed by *putting in fear*; it is sufficient if laid to be done by *violence*: And when it is laid to be done by putting in fear, this does not imply any great degree of terror or affright in the party robbed; it is enough that so much force or threatening by word or gesture, be used, as might create an apprehension of danger, or induce a man to part with his property without, or against his consent. Thus, if a man be knocked down without previous warning, and stripped of his property while senseless, though strictly he cannot be said to be *put in fear*, yet this is undoubtedly a robbery. Or if a person with a sword drawn begs an alms, and I gave it him through mistrust and apprehension, it

1790. violence, this is a felonious robbery. So, if under a pretence of sale, a man forcibly extorts money from another, this subterfuge shall not avail him. See 4 *Black. Com.* 242-3. See *Fost.* 128-9.

LARCINY.

Simple Larciny, is the "felonious taking and carrying away of the personal goods of another." The stealing of goods above the value of twelve pence, is called *grand larceny*; of goods to that value or under, *petit larceny*. There was formerly a great difference here in the mode of trial of these offences, but the kind of punishment was the same, though differing in quantity. There is no other distinction between them. It is called simple larciny, to distinguish it from *mixed* or *compound larciny*, which is accompanied with one, or both of the aggravations of a taking from one's *house*, or *person*. Larciny from the house, in the *night time*, under certain circumstances, we have seen, is *burglary*; from the *person*, by open and violent assault, and not *privately*, is *robbery*.

By the act of 1713, the party convicted of this offence, his aiders, comforters and abettors, were to be adjudged, for the first offence, to restore the goods and chattels stolen, to the right owner, or to pay him the full value thereof, or so much of them as cannot be restored; the value to be set by such persons, as the court, before whom the offenders should be convicted, should appoint to do the same, upon their oaths or affirmations; also, to pay the costs of prosecution, with all such other sums of money as the same court should allow for such owner or owner's loss of time, charges and disbursements, in the apprehending and prosecuting such offenders; and moreover, to forfeit and pay the like value of the goods to the governor, for the support of government, and committed to the common gaol of the county where they were convicted, there to remain 'till they made satisfaction for all sums so to be adjudged or recovered against them; and moreover, to be publicly whipped on his, or her, or their bare backs, with stripes well laid on, not exceeding twenty one. For the second offence, the sentence was to be the same, except that the forfeiture was to be double the value of the goods stolen, to the governor, for the support of government, and the public whipping, with not less than twenty one, nor more than forty stripes: And for the third, the same sentence, with this alteration and addition: The forfeiture to the governor, for the support of government, to be treble the value of the goods stolen, and the

public whipping to be with not less than thirty-nine stripes, nor more than fifty: And the court, at their discretion, were, for such third offence, to award and give judgment, that such offenders should be sent to some house of correction, or public work house, there to be set to work, corrected and remain without bail for such time as the justices should then judge and award, not less than twelve months, nor more than four years, to be accounted from the time of such conviction. And a form of execution was devised, to be issued from the same court, to enforce the restitution, &c. (which is extended to the cases of conviction for *robbery* and *burglary*, by the 9th section of the act of 23d of September, 1791.) Vol. 1 pa. 121-2.

By the act of 24th. of February, 1720 —1, persons guilty of larciny under the value of five shillings, were to be tried before two justices of the peace, without the intervention of a jury, and on conviction were to be adjudged, to be immediately and publicly whipped, upon his or her bare back, not exceeding fifteen lashes, or be fined for the first offence, at the discretion of the said magistrates, in any sum not exceeding twenty shillings, and to make restitution, if able, to the party wronged; and also to pay the charges of prosecution and whipping, or be sent to the work house, or prison, to be kept at hard labour, for any time not exceeding twelve days. But persons requesting to be tried at the sessions, might there be tried, upon giving security to appear, &c. (Chap. 243. Printed in *Galloway's Edition*, pa. 102.)

By the third section of the act in the text, the punishment to be inflicted for simple larciny, to the value of twenty shillings, or for being an accessory before the fact, is imprisonment at hard labour, for any term not exceeding three years, restitution of the stolen goods, and forfeiture of the value to the state. And by the 4th section, the act of Feb. 1720-1, is repealed, and larciny under twenty shillings shall be tried as other simple larcinies; and on conviction shall be deemed *petty larciny*; and the judgment is the same, except that the imprisonment is not to exceed one year.

By the 5th section of the act in the text, robbery or larciny of obligations or bonds, bills obligatory, bills of exchange, *promissory notes for the payment of money*, lottery tickets, paper bills of credit, certificates granted by or under the authority of this commonwealth, or of all, or any of the United States of America, shall be punished in the same manner as robbery, or larciny of any goods or chattels.

In consequence of the decision in the case of the *Commonwealth, v. Boyer*. 1 *Binney*, 201, which was an indictment for stealing "one ten dollar note of the President, Directors and Company of the Bank of North America," and in which the judgment was arrested, because it did not follow the description in the act, viz. "a promissory note for the payment of money." "bank notes" not being described in the act, not being the subject of larciny at common law; The act of 30th of January, 1810, was passed, which declares, that the robbery or larciny of any bank note or notes of any incorporated bank, shall be punishable in the same manner as robbery or larciny of any goods or chattels of equal amount.

By an act of 28th of February, 1787, (chap. 1250,) felons committed 'till they make restitution, shall have the benefit of the insolvent laws; which privilege, a subsequent act of 27th of March, 1790, (chap. 1485,) modified so as to empower the court to direct the felon to perform additional labour, in commutation of the restitution.

By the act of 27th. of March 1789, (chap. 1400,) persons confined for thirty days, in execution or otherwise, for any debts, fines or forfeitures, none of which exceed five pounds, exclusive of costs, shall upon application, be discharged by the gaoler, and shall not be liable to be again imprisoned for the same cause. Admitting this to apply to *fines* inflicted for *crimes*, the remedy was partial. And as it was ascertained that many miserable wretches, who are most frequently the objects of punishment for larcinies, were long detained for the fines and forfeitures only, after the residue of the sentence had been fulfilled; it is provided, that in all cases of *larciny*, or where by law a fixed or specific fine is affixed to the commission of any crime, the court, in its discretion, may, in lieu thereof, assess such fine as they may judge right, not exceeding the fine heretofore affixed by law. It also provides, that persons convicted of felony or larciny, and sentenced to undergo an imprisonment at hard labour, for any term not exceeding three years, the court in their discretion, may order the imprisonment, &c. to be in the county, or in the gaol and penitentiary of Philadelphia. See the act of 4th of April, 1807, (in this note, *ante*.)

The felonious taking of one bill obligatory, is punishable as larciny under this act. 1 *Binney*, 273. With respect to goods found on search, suspected to be stolen. See the 10th section of the act of 23d of September, 1791.

Horse stealing was punished by the act of 21st of February, 1767, (chap. 557.)

on conviction, in the following manner: For the first offence, to restore the horse, mare or gelding to the owner, or pay him the full value thereof, and also the costs of prosecution, with all such other sums of money as the court shall allow to such owner for his loss of time, charges and disbursements, in apprehending and prosecuting the offender; and also pay to the governor, for the support of government, the like value of the horse, &c. and stand in the pillory during the space of one hour, and be publicly whipped on his bare back with thirty nine lashes well laid on, and be committed to the work house or gaol, for any time not exceeding six months. For the second offence, the same sentence, with the addition of imprisonment at hard labour for any time not exceeding three years. Vol. 1, pa. 273. Receiving knowingly stolen horses, the same punishment. *ib.*

By the act of 10th of March, 1780, (chap. 879,) If any person shall feloniously take and carry away any horse, mare or gelding, of the property of any other person or persons, or of the United States of America, and shall be thereof convicted, for the first offence, he shall stand in the pillory for one hour, and shall be publicly whipped on his bare back, with thirty nine lashes well laid on, and at the same time shall have his ears cut off, and nailed to the pillory; and for the second offence, shall be whipped and pilloried in like manner, and be branded on the forehead, in a plain and visible manner, with the letters *H. T.*

But, by the third section of the act in the text, the judgment is now, to restore the horse, mare or gelding stolen, to the owner thereof, or to pay him the full value thereof, and also pay the like value to the commonwealth; and moreover, undergo a servitude for any term not exceeding seven years, in the discretion of the court, and be confined, kept to hard labour, fed and clothed as in that act is directed.

All felony includes trespass, and every indictment for larciny must have these words, "that he, &c. did feloniously take and carry away," from whence it follows, that if the party be guilty of no trespass in taking the goods, he cannot be guilty of felony in carrying them away. *Kel. 24 3 Inst. 107.* Therefore, one who finds goods which I have lost, and *animo furandi* (with a felonious intention) converts them to his own use, is no felon, *a fortiori*, one who has the actual possession of my goods, by my delivery for a special purpose, as a carrier, a taylor, or a friend, who is intrusted to keep them for my use, cannot be said to steal them, by embezzling them afterwards. 3 *Inst.*

1790. 107-8. But if the carrier opens a bale or pack of goods, or pierces a vessel of wine; or if a miller who has corn to grind, takes out part of it, with intent to steal: These are larcinies, and the *animus furandi* (the intent to steal) is manifest. So, if a carrier, after he has delivered the goods, secretly takes away the whole, for his trust was determined. 3 *Inst.* 107. *Bro. Corone.* 160. So, where one has the bare charge, or special use of goods, but not the possession of them, as a shepherd who looks after my sheep, or a butler, who takes care of my plate, or a servant, who keeps a key to my chamber, or a guest who has a piece of plate set before him in an inn, may be guilty of felony in fraudulently taking them away. *Bro. Corone.* 58, 137, 160. *Poph.* 84. *Owen.* 52. If a person intending to steal my horse, take out a replevin, and thereby have the horse delivered to him by the sheriff; or one intending to rifle my goods, gets possession from the sheriff, by virtue of a judgment obtained upon false *affidavits*, it is felony, for it is done in *fraud of the law*. 3 *Inst.* 64, 108. *Kel.* 43-4. 1 *Sid.* 254. *T. Raym.* 276. Yet, if one thinking he has a title to the horse of *B.* seizes it as his own; or supposing that *B.* holds of him, distrains the horse of *B.* without cause, this is no felony, but a trespass, because there is a pretence of title. But, if done secretly, or being charged with it, he denies it: these circumstances may make it a felony. 1 *Hale.* 509. He who steals my goods from *J. S.* who had stolen them before, may be indicted as having stolen them from me. So, he who steals my goods in the county of *Lancaster*, and carries them to the county of *York*, may be indicted in either county. *Bro. Steph.* 84. *ib.* *Corone.* 171. As there must not only be a *taking*, but a *carrying away*; so, it has been held, and is clear law, that the least removing of the thing taken, from the place where it was before, is sufficient, though it be not quite carried off; as if a man be leading another's horse out of the close, and be apprehended in the fact: or, if a guest stealing goods out of an inn, has removed them from his chamber down stairs, or a thief, intending to steal plate, takes it out of a chest and lays it down upon the floor, but is surprised before he can escape with it: or, removing goods with a felonious intention, from the fore part to the hind part of a waggon, where he is detected: these are larcinies. 3 *Inst.* 108-9. *Patham.* 21. 2 *Vent.* 215. *Bro. Corone.* 107. A man may commit larceny by taking his own goods: as, if *A.* delivers goods to *F.* being a taylor, carrier, &c. and afterwards, with an intent to charge him, fraudulently and secretly take them

away, it is felony. *Bro. Corone.* 45, 160. *Cro. El.* 536-7. 3 *Inst.* 110. But no delivery of goods from the owner to the offender upon trust, can ground a larceny: as, if *A.* lends *B.* a horse, and he rides away with him; or, if I send goods by a carrier, and he carries them away, these are no larcinies. The goods must not be annexed to the freehold, for it is but a trespass to steal corn or grass growing, or apples from a tree, &c. But if the thief severs them at one time, whereby the trespass is completed, and comes at another time when they are so turned into personalty, and takes them, it is larceny. So it is, if the owner, or any one else had severed them. 2 *Kel.* 875, 1 *Mod.* 89. *Bro. Corone.* 76. 1 *Vent.* 187. Taking a shroud from a dead person is felony: (so it may be for taking goods whose owner is unknown.) 3 *Inst.* 110. Yet, *presumptive* evidence of felony should be admitted cautiously. And lord *Hale* recommends, never to convict a man for stealing the goods of a person *unknown*, merely because he will give no account how he came by them, unless an actual felony be proved of such goods. 2 *Hale*, 289 90. A married woman commits not larceny, if it be done by the coercion of her husband; nor can she be accessory to her husband: But of her own accord she may commit felony. 3 *Inst.* 108. See 1 *Hawk.* (folio) 89-94. and 4 *Black. Com.* 229-236.

The following case was decided in the supreme court at Lancaster, 25th of May, 1811.

Eve Spangler, Plaintiff in Error, v. The Commonwealth.

Tilghman, C. J. This was a writ of error to the court of quarter sessions of *Dauphin* county. Judgment was given against *Eve Spangler*, on an indictment for stealing *four* bank notes.

The plaintiff in error has made several points concerning the jurisdiction of the court of quarter sessions, and the process for summoning the jury, on which I shall give no opinion. It will be sufficient to consider the exception to the indictment. *Eve Spangler* is charged with stealing "three several promissory notes for the payment of money, viz. three bank notes, each for the payment of \$5. of the value each of five dollars lawful money of the United States; and a promissory note for the payment of money, viz. a bank note for the payment of \$10. like lawful money, the property of *William Graydon*, esq."

The indictment is founded on the act of 5th of April, 1790, by the 5th section of which, it is enacted, that robbery or larceny of "promissory notes for the payment of money," shall be punished

in the same manner as robbery or larceny of any goods or chattels. I will not say whether the indictment might not have been supported, if the case had turned intirely on the act which has been mentioned. But it is necessary to take other acts into consideration. By the "act to amend the penal laws" passed 30th of Jan. 1810: It is enacted, that robbery or larceny of any bank note or bank notes of any *incorporated bank*, shall be punished in the same manner as the robbery or larceny of any goods or chattels of equal amount. Whether the legislature considered bank notes as included in the terms "promissory notes for the payment of money," in the act of 5th of April, 1790, is not certain. The "act to amend the penal laws" contains no express repeal of any part of the act of 5th April, 1790. Yet, when larceny of the notes of *incorporated banks* is made punishable, one cannot help supposing that it was intended, that notes of *unincorporated banks*, should not be the subject of larceny. It is evident, that in the year 1810, it was the object of the legislature to suppress all *unincorporated banks*. This appears, not only from the act just mentioned, but still more clearly from another act passed the same session, (19th March, 1810,) which bears strongly on the case before the court. By the first section of this last act, it is made unlawful, after 1st May, 1810, for any association of persons, who, at the time of passing the act, were, or thereafter should be connected for the purpose of banking, and who were *not incorporated by law*, to make, utter, or issue, any bills or notes, in the nature of bank notes, payable to bearer, or order, or otherwise. The third section declares it to be unlawful for any person "to offer, or accept in payment, any note issued from any unincorporated bank, knowing it to be such." The fourth section contains a *proviso*, that "nothing contained in the act should be construed so as to discharge any person or persons, or any association of persons, who might, before the passing of the act, have become engaged for the payment of any sum of money, from such engagements." Suppose now, that a person should have *knowingly* received a note issued contrary to this law, and the bank had refused payment, no action would lie on it, because the courts of the commonwealth would not suffer themselves to be instrumental in enforcing the execution of an unlawful contract. This principle has been established in the cases of *Anthony's Executors, v. Vanlear*, and *Mitchell, v. Smith*, both decided in this court. There may be bank notes therefore

which are of no value or validity in law, and consequently cannot be the subject of larceny. For although bank notes are "promissory notes for the payment of money," within the meaning of the act of 5th April, 1790, yet that act cannot be construed so as to afford protection to notes unlawfully issued, and unlawfully received. That being the case, it is necessary, that an indictment for stealing bank notes, should either aver in general, that they were issued by a bank incorporated by law, or name the bank, and aver that it was incorporated, or show in some sufficient manner, that the notes were lawful. If this is not done, judgment cannot be entered, because it cannot appear to the court, that any offence has been committed. Inasmuch then, as this indictment does not show that the bank notes charged to have been stolen, were lawful notes. I am of opinion, that the judgment of the court of quarter sessions was erroneous.

Feates, J. delivered his opinion at large; to the same effect.

Brackenridge, J. concurred.

Judgment reversed.

See the cases of the *People, v. Wilson* and *Osborn*. 6 Johnson's New York Reports, pa. 329.

FORGERY, COUNTERFEITING, UTTERING, PUBLISHING.

Forgery, or the *crimen falsi*, is an offence at common law, and may be defined to be "the fraudulent making or alteration of a writing, to the prejudice of another man's right;" for which the offender might suffer fine, imprisonment and pillory.

By an act passed in 1700, (chap. 15. vol. 1, pa. 4.) Whosoever shall forge, deface, corrupt or embezzle any charters, gifts, grants, bonds, bills, wills, conveyances or contracts, or shall deface or falsify any inrollment, registry or record, within this state, shall forfeit double the value of the damage thereby sustained, one half whereof shall go to the party wronged: and the party so offending, shall be discarded from all places of trust, and publicly disgraced as a false person, in the pillory or otherwise, at the discretion of the court before whom the cause shall be tried.

By an act passed in 1705, (chap. 149. vol. 1, pa. 49.) If any person shall be convicted of counterfeiting the hand or seal of another, with an intent to defraud such person, shall suffer three months imprisonment at hard labour, and be fined treble the value he or she shall have defrauded, or attempted to have defrauded thereby, to the use of the party wronged: and whosoever shall

1790. counterfeit the piny or broad seal of the province, being convicted thereof, shall suffer seven years imprisonment as aforesaid, and be fined at the discretion of the court, in any sum not exceeding one hundred pounds to the support of government.

If any person shall forge any entry of acknowledgments, certificates or indorsements of or on deeds, whereby the freehold or inheritance of any man may be charged, he shall be liable to the penalties against forgers of false deeds &c. Act of May, 28th 1715, for acknowledging and recording of deeds, vol. 1. pa. 95.

By the 5th section of the act of 22d of April, 1794. Every person who shall be concerned in printing, signing or passing, any counterfeit notes of the banks of Pennsylvania, North America, or the United States, knowing them to be such, or altering any genuine notes of the said banks, shall be sentenced to undergo a confinement in the gaol and penitentiary house of *Philadelphia* for any time not less than four, nor more than fifteen years, and shall also pay such fine as the court shall adjudge, not exceeding one thousand dollars,—or, of the *Philadelphia* bank, by the seventh section of its incorporating act, passed March 5th, 1804, (chap. 2439.) or, of the *Farmers and Mechanics* bank, by the 9th section of their incorporating act, passed 16th of March, 1809.

By the 20th section of the act to regulate the general elections, passed February 15th, 1793, (chap. 2009.) if any one shall knowingly, publish, utter, or make use of any forged or fals. receipts, or certificate (for payment of taxes, or of naturalization) with intent to impose the same upon, or to deceive any Judge or Inspector of any election, such person shall incur a fine of fifty dollars, and suffer six months imprisonment; and by the 22d section of the same act, if any judge of the election, inspector, clerk or other person, shall deface, alter, embezzle or destroy, any of the tickets, lists or tally papers, or certificates, after the election shall be closed, and the said tickets &c. deposited &c. such person, so offending shall, forfeit and pay the sum of three hundred dollars to any person who shall sue for the same within six months, and suffer imprisonment for a term not exceeding twelve months.

As to the punishment of forgery in cases where the pillory was formerly part of the sentence, see the 4th section of the act in the text, and the act of 4th of April, 1807, (chap. 2305, § 1.) by which the imprisonment at hard labour may be extended to a period not exceeding seven years, and by § 2, may be sent to the penitentiary of *Philadelphia*.

In the case of the *Commonwealth v. Scarle*, the defendant was indicted at

common law, for forging and for uttering and publishing as true a counterfeit ten dollar note of the bank of *North America*. He was acquitted of the forgery, and convicted on the second count for uttering and publishing the said note, as true and genuine, knowing the same to be false, forged and counterfeited &c.

His counsel moved in arrest of judgment for the following reasons. Because the uttering a note of the bank of *North America*, knowing the same to be counterfeit, is not indictable at common law, but is an offence created by act of Assembly, and therefore the indictment should have concluded "against the act of Assembly," or, if it is an offence at common law, still as it is punishable only by act of Assembly, no punishment can be inflicted, because the indictment does not conclude against the form of the act, &c.

After full argument, the following opinion was delivered by the Chief Justice.

It will be necessary to consider, 1st. Whether the offence is indictable at common law. 2d. Whether it is punishable by any act of Assembly, and, 3d. Whether judgment for the punishment prescribed by act of Assembly, can be rendered on this indictment.

1st. It seems to have been the opinion of the old writers on criminal law, that forgery at common law could not be committed with respect to any writing of a private nature, unless the same was under seal. But this point was fully investigated and decided to the contrary, in the case of the *King v. Ward*, 2 *Ld. Raym.* 1461; since which the law has been considered as settled. In that case the indictment contained two counts; the 1st, for forging an unsealed writing, with intent to defraud the Duke of *Buckingham*, and the 2d, for publishing the same writing, with the same intent. The court did not decide on the second count, because there was no occasion; but I can see no reason, why the publication should not be indictable, as well as the forgery; every mischief that might be produced by one, might also be produced by the other, one point decided by the court, was, that it was immaterial whether the Duke of *Buckingham* was actually injured by the forgery or not. In giving their opinion, they say, it may be inferred from the statute, 5 *Eliz. c. 14.* that the forgery of writings without seal, was an offence at common law, because the preamble of the statute recites, that the wicked practice of making, forging and publishing, deeds, writings &c. hath increased, chiefly because the punishments, limited by the laws and statutes were too mild. Now this argument has as much weight to prove that the publication was punishable, as that the forgery itself was, because both are mentioned. But what I chiefly rely on, is, that the publication is in its

nature as dangerous to society as the forgery; and therefore there is no good reason, why the common law should punish one, and not the other. There have been so many statutes in England inflicting severe punishments on forger, and the uttering and publishing forged writings, within the last century, that we are not to expect many precedents of indictments at common law in that country. But no authority, or even dictum, has been produced to shew that publication was not an offence. We may safely conclude therefore, from the reason of the thing that it is.

We have no act of assembly expressly prohibiting the forging, or uttering of forged notes of the Bank of North America. But the act of 22d of April, 1794, § 5. that every person who shall be convicted of having falsely uttered, paid, or tendered in payment, any counterfeit or forged gold or silver coin, knowing the same to be forged or counterfeit, or shall be concerned in printing, forging, or passing any counterfeit notes, of the banks of Pennsylvania, North America, or the United States, knowing them to be such, or altering any of the genuine notes of any of the said banks, shall, &c. The offence laid in the indictment does not come within this act, for the plaintiff is not charged with passing, but only uttering and publishing, which is a different thing. The different expressions in this act, with respect to gold and silver coin, and bank notes, shew that the legislature intended a difference; and there is really a difference in the nature of things. To utter and publish, is to declare or assert, directly or indirectly, by words or actions, that a note is good. To offer it in payment would be an uttering or publishing; but it is not passed, until it is received by the person to whom it is offered. It is unnecessary to decide whether it would be passed, if the person to whom it is offered, receives it for the purpose of having it examined. The indictment only charges the uttering and publishing it as true and genuine. But there is another act of assembly, passed the 5th of April, 1790, (act in the text) which provides for the offences set forth in the indictment (see the section) and by the act of 4th of April, 1807, this time is increased to any term not exceeding seven years, at the discretion of the court. There is no doubt but this offence might have been punished by setting in the pillory. It is therefore within the act.

It remains to be considered, whether under this indictment we can give judgment for the punishment prescribed by the act of assembly. I take the law to be, that where a statute creates, or expressly prohibits an offence, and inflicts a punishment, the indictment must conclude against the form of the statute. But where a statute only inflicts a punishment on

that which was an offence before, there is no necessity of mentioning the statute. When an indictment charges a person with having done a thing against the form of the statute, &c. the obvious meaning is, that the offence was committed against the form of the statute, without any reference to the punishment. This seems to be Lord Hale's idea, who says, "if an offence be at common law, and also prohibited by statute, with a corporal or other penalty, yet it seems, the party may be indicted at common law; and then, though it concludes not *contra formam statuti*, it stands as an indictment at common law, and can receive only the penalty the common law inflicts in that case." 2 Hale 191. The expressions of Hawkins are more general, and less accurate. He says, "it seems to be taken as a common ground, that a judgment by statute shall never be given on an indictment at common law, as every indictment which doth not conclude *contra formam statuti* shall be taken to be." I presume his meaning was the same as Hale's; but if his opinion was, that judgment for the punishment prescribed by statute, could in no case be given on an indictment not concluding *contra formam statuti*, he was mistaken, as may be proved by the highest authority. By the statute 25 Geo. 2. c. 37. The judgment in murder is altered; the day of execution is mentioned, and the body of the criminal is ordered to be dissected and anatomized; yet the indictments since that statute do not conclude *contra formam statuti*. See the appendix to Blackstone's Com.: also, the trial of Earl Ferrars—State Trials—so in many other cases. It may be proper to mention an instance establishing the same principle in England, though not an authority here, because it is since our revolution. By Stat. 30 Geo. 3. c. 48. the judgments against women convicted of treason, or petty treason, are altered; yet the indictments continue to be drawn at common law. I do not know that the point has ever before been brought before the courts of this state for decision; but the precedents as far as they have been searched, are to be found in both ways. I make no doubt but in a vast many cases, judgments under acts of assembly have been given on the indictments at common law. Upon the fullest deliberation, the court are satisfied, that the judgment ought not to be arrested. 2 Binney 332.

By the act of 21st of February 1767, (Chap. 557.) If any person shall falsely forge, and counterfeit any coin of gold or silver, which is now or shall be passing, or in circulation, in this province, being thereof lawfully convicted, shall suffer death without benefit of clergy; and every person, who shall pay, or tender in payment any such forged and counterfeited coin of gold or silver, knowing the same

1790. to be so forged and counterfeited, on conviction shall be sentenced to the pillory, have both his ears cut off and nailed to the pillory, and be publicly whipped on his bare back with twenty one lashes well laid on, and forfeit the sum of one hundred pounds &c. Vol. 1. p. 272.

Counterfeiting the bills of credit emitted by the act of 21st of Feb. 7. 1773. (Chap. 672.) or forging the names of the signers thereof, within the province or elsewhere, or uttering such bills, knowing them to be counterfeit, was punishable with death, without benefit of clergy.—So of those emitted by the act of March 1785, &c. *ante*. p. 289.—But these crimes, it is presumed cannot now be committed, as the bills are not in circulation and are irredeemable.

By the act of 23d of April 1794, the counterfeiting gold or silver coin, or uttering, paying or tendering it in payment &c. is punished equally, by imprisonment at hard labour, for any time not less than four, nor more than fifteen years, and a fine not exceeding a thousand dollars—and a second offence of counterfeiting, which was capital, by imprisonment during life.—

Counterfeiting the brandmarks on casks, of beef and pork, was punishable on conviction, for the first offence, with forfeiture of five pounds—the second offence ten pounds, and for the third and every other offence, by imprisonment and pillory. Vol. 1. p. 172, (act of 18th of August, 1727) and the same punishment throughout, for counterfeiting the brand-marks on flour casks, by the act of 5th of April 1781, (Vol. 1. p. 527) on shad and herring casks, Vol. 1. p. 429. See p. 271, *ante*.

This offence a third time committed, is of course punishable under the 4th section of the act in the text, and the act of 4th of April, 1807.

PERJURY—SUBORNATION OF PERJURY.

By the act of 1718. §. 25. the statute made in the 5th year of queen *Elizabeth*, c. 9. entitled “an act for the punishment of such persons as shall procure or commit any wilful perjury, shall be observed in this province, and be duly put in execution, as well against those that shall falsify their affirmations, as those who shall falsify their oaths, or be convicted of subornation of perjury. Vol. i. p. 120.

This statute is still in force, except the 10th, 11th, 12th and 13th sections, which are inapplicable to this commonwealth, and except the punishment by imprisonment and paying of money, which is altered by our penal laws.

The parts of the statute in force here follow:—

“All and every person and persons, which shall unlawfully and corruptly procure any witness or witnesses, by letters,

rewards, promises, or by any other sinister and unlawful labour and means whatsoever, to commit any wilful and corrupt perjury, in any matter or cause depending in suit and variance, by any writ, action, bill, complaint, or information, in any wise touching and concerning any lands, tenements or hereditaments, or any goods, chattels, debts or damages, (in any court having authority, &c.) or shall likewise unlawfully and corruptly procure or suborn any witness, or witnesses, to testify in *perpetuam rei memoriam*, every such offender being thereof lawfully convicted, &c.—No person so convicted or attainted, to be from thenceforth received as a witness to be deposed and sworn in any court of record until such time as the judgment given against him be reversed, &c.

If any person, either by the subornation, unlawful procurement, sinister persuasion, or means of any others, or by their own act, consent or agreement, wilfully and corruptly commit any manner of wilful perjury by his or their deposition, in any court &c. or being examined *ad perpetuam rei memoriam*, that then every person so offending, and being thereof duly convict or attainted &c. shall &c. and the oath of such person so offending, from thenceforth not to be received in any court of record &c. until such judgment be reversed &c.

As well the Judge or Judges of the court where any suit is or shall be, and whereupon any such perjury is or shall happen to be committed, as also the justices of Assize and Gaol Delivery, in their several circuits, and the Justices of the peace in every county, at their Quarter Sessions, shall have full power and authority, by virtue hereof, to enquire of all and every the defaults and offences, perpetrated, committed or done, contrary to this act, by inquisition, presentment, bill or [information] before them exhibited, or otherwise lawfully to hear and determine the same, and thereupon to give judgment, reward, process and execution of the same, according to the course of the laws, &c.”

By the act of 1718, §. 24. Subornation of perjury, not only with respect to any cause depending in suit and variance, but in any matter, cause or thing whatsoever, upon oath or affirmation, was punishable by forfeiture of forty pounds, one-half to the Governor, for the support of government, and the other half to the party grieved. But for want of lands, goods &c. to satisfy the said forty pounds, such offender, being convicted or attainted of perjury or subornation aforesaid, was to suffer imprisonment for the space of six months, and stand on the pillory &c.

Perjury in proving deeds &c. to incur the like penalties, as if the oath or affirmation had been in any court of record, vol. 1, pa. 95

False affirmation to incur the same penalties as wilful and corrupt perjury, by the laws of Great Britain, vol. 1, pa. 111, 112.

Witnesses for prisoners, swearing or affirming falsely in their evidence to incur the like penalties, vol. 1, pa. 112.

Insolvent debtor, committing perjury, on his discharge, by oath or affirmation, to incur the like penalties, and may be taken in execution *de novo*, vol. 1, p. 184.

Persons swearing falsely by an uplifted hand, to incur the like penalties, vol. 1, p. 388.

For perjury at elections, under the election law, see the act of the 15th of February, 1799, (chap. 2009.) See the 4th section of the act in the text—But now, by an act passed the 3d of April, 1804, (chap. 2510.) every person who shall commit perjury or suborn, or procure any person to commit perjury, by wilfully and falsely swearing or affirming, shall, upon being thereof convicted in any court of law within this commonwealth, forfeit and pay any sum not exceeding five hundred dollars, and suffer imprisonment, and be kept at hard labour during any term not exceeding seven years, at the discretion of the court before whom such conviction shall be had; and further shall thereafter be disqualified from holding any office of honour, trust or profit in this commonwealth, and from being admitted as a legal witness in any matter of controversy: and so much of any law hereby altered, is repealed.

For other cases, under particular acts of assembly, in which perjury may be committed. See the general index, title, *Perjury*.

Perjury is defined by Sir *Edward Coke*, to be a crime committed when a *lawful* oath is administered, in some *judicial* proceeding to a person who swears *wilfully*, *absolutely*, and *falsely*, in a matter *material*, to the issue, or point in question. 3. *Inst.* The law takes no notice of any perjury, but such as is committed in some court of Justice, having power to administer an oath; or before some magistrate or proper officer invested with similar authority, in some proceedings relative to a civil suit, or a criminal prosecution; but takes no notice of a voluntary *affidavit* in any extrajudicial matter. The perjury must also be corrupt (that is *malo animo*, or with a wicked intention) wilful, positive and absolute; not upon surprize or the like; it must also be upon some point material to the question in dispute; for if it only be in some trifling collateral circumstance to which no regard is paid, it is no more penal than in the voluntary, extrajudicial oaths before mentioned. *Subornation* of perjury, we have seen, is the offence of procuring another to take such a false oath, as constitutes perjury in the principal. The prosecution is usu-

ally carried on for the offence at common law. See 4 *Black. Com.* 137.—8.

The statute of *Elizabeth* does not reach every case; and in England has been supplied by various subsequent statutes; and here, by the last act on the subject, of the 3d of April 1804. The punishment far exceeds that in the statute; and the terms used being general, "wilfully and falsely swearing or affirming" would appear to include every thing which is perjury at common law.

Since this note went to press, the following important case occurred; and no apology will be necessary for its insertion at large.

Frederick Kramer, Plaintiff in Error, v. the *Commonwealth*.

Indictment for *perjury*, in the Court of Quarter Sessions of *Berks* County.

The Defendant was convicted, and the judgment rendered was as follows: "1st April 1811. Sentence and judgment of the court is, that the said *Frederick Kramer* pay a fine of one hundred dollars to the commonwealth, undergo an imprisonment at *hard* labour for six calendar-months from this day in the Gaol of *Berks* County, and during that time to be confined, fed, clothed, and treated as the law directs, and further that the said *Frederick Kramer* shall hereafter be disqualified from holding any office of honour, trust or profit in this commonwealth, and from being admitted as a legal witness in any matter of controversy, and that he pay the costs of prosecution, and stand committed until this sentence be complied with.

Several errors were assigned; but as the opinion of the court was expressed upon two points only, it will be unnecessary to state the others.

1. That the Court of Quarter Sessions has no jurisdiction in cases of *perjury*.

2. That the judgment rendered on the verdict is illegal, and contrary to the act of assembly.

The argument came on at the Supreme Court for the Lancaster district, May term 1811, and on the 27th of May, the opinions of the judges were delivered as follow.

Tilghman, C. J. This is a writ of error to the Court of Quarter Sessions of *Berks*, in which the Plaintiff in error was indicted and convicted of perjury. Many errors have been assigned; there are but two, however, on which I think it necessary to give an opinion. The first is, that the court below had no jurisdiction. Second, that the punishment awarded is greater than is warranted by law.

1. As the Court of Quarter Sessions exercises an extensive criminal jurisdiction, it is of importance that no doubt should remain on that subject. I shall endeavour, therefore to mark the line of its jurisdiction distinctly, in order that

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the legislature, if they think it necessary, may alter it. It is provided by our present constitution, made in the year 1790, that there shall be a Court of Quarter Sessions of the peace, and a Court of Common pleas for each county; and that the judges of the Court of Common Pleas of each county, *any two of whom* shall be a *quorum*, shall compose the Court of Quarter Sessions of the peace. It is also provided, that the judges of the Court of Common pleas in each county, shall by virtue of their offices, be justices of *oyer and terminer* and general gaol delivery, for the trial of *capital and other offenders* therein; and any two of them, the *president* being one, shall be a *quorum*. The constitution is silent as to the jurisdiction of the Quarter Sessions, from whence it is to be inferred, that it is to be considered as a court whose jurisdiction was well known, and in which it was not intended to make any alteration. This leads me to inquire, what was the jurisdiction of this court previous to the adoption of the constitution. At the time of the American revolution, all authority under the king of *Great Britain* having ceased, it became necessary to reorganize the courts of justice. Accordingly we find that by an act passed 28th of January 1777. (Vol. I. pa. 430.) the several courts were re-established, with the same jurisdiction that they possessed before that time. The question recurs; what was the jurisdiction of the Court of Quarter Sessions? On this head we are not left to conjecture. The foundation of that, and other courts is found in an act passed 22d of May 1722, entitled "an act for establishing courts of judicature in this province." (Vol. I. pa. 131.) By the second section it is enacted, that there shall be a court styled "The General Quarter Sessions of the peace, and gaol delivery," holden and kept four times a year in each county. The third section provides, that the justices of the peace, or any three of them, "shall and may hold the said General Sessions of the *peace* and *gaol delivery* according to law, and as fully and effectually as any justices of the *peace*, justices of the *assize*, justices of *oyer and terminer* or of *gaol delivery* may or can do." It would seem from this, that the court of Quarter Sessions were to have jurisdiction of *capital offences*. But that this was not the case, will appear clearly from other parts of the act. The third section directs, that every recognizance taken before any of the justices, for suspicion of any manner of felony, or other crime *not triable in the Court of Quarter Sessions of the peace and gaol delivery*, "shall be certified before the justices of the *Supreme Court of oyer and terminer*. By the 18th section, the justices of the *Supreme Court* are authorized and empowered, from time to time, to deliver the gaols of all persons

who then were, or thereafter should be committed for "treason, murder, and such other crimes, as by the laws of the province then were, or thereafter should be made *capital or felonies of death*." When all parts of this act are considered, the intention is plain, that crimes punishable with death should be tried by the justices of the *Supreme Court*, and all other offences, by the courts of Quarter Sessions. But the justices of the *Supreme Court* had likewise jurisdiction of inferior offences, when holding courts of *oyer and terminer* and general gaol delivery. That this was the boundary of the respective jurisdictions, I have always understood, and the records of the several courts before the revolution will prove it. By the merciful improvements of our penal code, in the year 1790, and since, no crime but murder of an atrocious nature, is now punished with death. But that has produced no alteration in the criminal jurisdiction, so far as relates to the sessions. Those crimes which were *formerly* punished with death, remain out of the jurisdiction of the Courts of Quarter Sessions. (See act of 22d of April 1794. §. 16.) They may be tried, however, by the same persons, who now compose the Court of Quarter Sessions, provided the president attends, because as before mentioned, the judges of the Courts of Common Pleas compose the Courts of Quarter Sessions, and by virtue of their offices, are justices of *oyer and terminer*, and *general gaol delivery*. It sometimes happens that the sickness of the president prevents the holding of courts of *oyer and terminer*, and in that case, the offences of *perjury* and *forgery* &c. may be tried in the sessions. If this be thought improper, the legislature have the power to order it otherwise; as the law now stands, I have no doubt of the jurisdiction of the Court of *Quarter Sessions*.

I will now consider the second point; the judgment rendered by the court below. In order to understand this matter, it will be necessary to take a view of several acts of assembly relative to the punishment of perjury. By the 4th section of the act of 5th of April 1790, a certain class of offences, in which perjury is included, were made punishable (instead of cutting off the ears &c.) by fine and imprisonment at hard labour, not exceeding the term of two years, and during the time of imprisonment, they were to be fed, clothed and treated in the manner directed in another part of the said act. This manner of treatment was different in the gaol of the county of *Philadelphia*, from what it was in the gaols of the other counties, for reasons which it is unnecessary to mention. The present subject relates to the latter only. The 28th sect. of the act describes the manner in which those persons should be

treated who were confined in gaols, other than that of the county of *Philadelphia*. Without mentioning the whole of it, it is sufficient to say, that the keepers of the gaol were authorized, in case the convicts were idle, or refused to labour, or were guilty of any *trespass*, to withhold from them all sustenance except bread and water, to put *iron yokes* round their necks, chains upon their legs, or otherwise restrain in irons such as should be incorrigible, or irreclaimable without such severity. This mode of treatment may amount to a heavy punishment, and it has always constituted part of the judgment against convicts who were subject to it. To avoid prolixity, the judges have generally used this mode of expression, "that he shall be confined, fed, clothed and treated as is directed by law." These are the expressions in the present judgment, and that is the error complained of. Having shewn what was formerly the punishment of perjury, let us see what it now is. This will be found in an act intitled "an act for the punishment of perjury or subornation of perjury" passed 3d of April 1804. The convict is made liable to a fine, not exceeding five hundred dollars, imprisonment at hard labour during any term not exceeding seven years, disqualification from holding any offices of honour, trust or profit, and from being a legal witness in any matter of controversy. The second section repeals so much of any former law as is thereby altered or supplied. This act was certainly intended to define the complete punishment of perjury, and every former law, so far as the same related to punishment, was repealed. Now we see that nothing is said in the act of the manner in which convicts were to be treated, during their imprisonment. The question then is; had the court a right to direct the manner? They certainly had not, unless this act can be connected with the former act, so as to retain that part of the former, which prescribes the manner of treatment. If the manner of treatment is a substantial part of the punishment, and if every thing in former laws, inflicting punishment, was repealed, this connection cannot be supported. But besides it will appear, that the 28th section of the act of 5th of April 1790, was confined to persons sentenced to hard labour, under the provisions of that act. The expressions are "the malefactors sentenced to hard labour as aforesaid;"—that is to say, under the provisions in that act, for the punishment of the several offences therein mentioned. I know of no law, by which persons, in general, who are sentenced to imprisonment at hard labour, are made liable to any particular treatment. On the contrary, the mode of treatment is prescribed in the several acts by which the punishment is directed.

This will appear by the act of 22d of April 1794. § 4. 5. and 6. by which persons punishable by imprisonment at hard labour, for the crimes of high treason, arson, rape, murder of the second degree, forgery, and counterfeiting of gold and silver coin, passing counterfeit notes of sundry banks, and maim, are expressly made subject to the treatment prescribed by an act entitled "an act to reform the penal laws of this state," or by the provisions of the said act of 22d of April 1794, which made some alterations in the treatment prescribed by the former; and it is remarkable, that in the 7th section of the act of 22d of April 1794, the punishment of voluntary manslaughter, is, by hard labour, and solitary confinement, but no particular treatment is prescribed, from whence I infer, that persons convicted of that offence, were not intended to be liable to the same treatment with the offenders mentioned in the 4th, 5th and 6th sections. But it has been contended, that the words in this judgment, which relate to the feeding, clothing and treatment, shall be rejected as surplusage; because, if the law directs no particular manner of feeding, &c. that part of the judgment can have no operation.—I cannot think so. These words were certainly intended to have an operation, and will perplex the gaoler who has the custody of the prisoner. To adjudge that a man shall be fed, clothed and treated, as the law directs, implies an assertion that the law directs some particular mode of feeding, &c. A judgment in a criminal case must not be expressed in terms which tend to mislead the persons by whom it is to be executed. I am therefore of opinion, that the judgment of the Court of Quarter Sessions was erroneous.

Yeates, J.—The present writ of error has been argued with singular zeal and ingenuity. I deem it superfluous to consider all the different exceptions which have been taken to the proceedings; but it is highly important to the peace and good order of the community, that the opinion of this court should be known as to the legitimate jurisdiction of the courts of general Quarter Sessions of the peace and gaol delivery of this state.

It has been strenuously contended, that the powers of the sessions here, are the same as in *England*; that their authority is derived from the commission of the justices founded on the statute of 34 Edw. 3. c. 1. and that the words of the statute have received a known construction. 2 *Hawk.* c. 8. § 18.—4 *Black. Com.* 271. No indictment lies before justices of the peace for forgery, or for perjury at common law; but perjury on the statute of 5 Eliz. is indictable in the sessions, because it is so directed by the statute. 1 *Salk.* 406. an indictment for perjury at the Quarter Sessions, at common

1790. law, was quashed for want of jurisdiction. 2 *Str.* 1088.

I am fully satisfied, that the jurisdiction of the sessions is solely founded on our own acts of assembly; and therefore I shall examine those laws as far back as I have materials in my power.

The establishing of all courts of judicature within the government, was granted to the first proprietary, by the royal charter. (See Appendix.) An act for establishing courts of judicature was passed, 13 *William*. 3. in 1701. (chap. 106. in repealed laws of 1701. vol. 1, p. xi.) which was repealed by the queen in council, 7th of Feb. 1705. (*ib.* p. lvii.)—Another act was made, 9th ann. in 1710. (*ib.* p. xiii.) which was also repealed in council, 20th of Feb. 1713. (*ib.* p. lviii.)—An act for establishing the Courts of General Quarter Sessions was made 28th May 1715. (*ib.* c. 302 p. xiv.) which was repealed by the lords justices 21st July, 1719, with two other acts for establishing Courts of Common Pleas, and a Supreme, or Provincial Court of Law and Equity. (*ib.* p. lviii.)—An act for the better recovery of fines and forfeitures due to the governor and government of this province, was passed 28th of May, 1715, (*ib.* c. 206. p. xiv.) which directed, that all fines &c. set in the Supreme Court, or in any of the Courts of Common Pleas, Courts of General Quarter Sessions of the peace and gaol delivery, or before the special courts of *Oyer* and *Terminer*, shall be estreated into the Supreme Court. This act continued in force, until it was repealed by a law passed 16th March, 1780. (*ib.* c. 888. p. liv.) The act for establishing courts of judicature, passed 22d of May 1722. (Vol. 1. p. 151.)—The second section erects a Court of General Quarter Sessions of the peace and gaol delivery, which shall be holden four times in every year in each county; and, by sect. 3. the justices thereof shall hold the same court according to law, and as fully and effectually as any justices of the peace, justices of the assize, justices of *Oyer* and *Terminer*, or of gaol delivery, may or can do. The 4th section directs them to certify their recognizances to the next sessions. But every recognizance for suspicious of any manner of felony not triable before them, shall be certified before justices of the Supreme Court of *Oyer* and *Terminer*. The 18th section gives very extensive powers to the judges of the Supreme Court, and it is declared by section 19. that all capital offences or felonies of death, shall be enquired of, heard and determined before the same judges. It is enacted then in express terms, that the Courts of General Quarter Sessions of the peace and gaol delivery, shall possess all the powers of justices of the assize, of *Oyer* and *Terminer* and gaol delivery, but as to capital offences, or felonies of death, the jurisdiction is confined to the

Supreme Court. The law as well as our present constitution, clearly had in view the powers exercised by such official characters in the kingdom of *England*, concerning which an accurate knowledge can be obtained from the English books: but the limits of jurisdiction of the Supreme Court and Quarter Sessions are precisely drawn. The sessions have a concurrent jurisdiction with the Supreme Court as to all crimes cognizable before them, except as to capital offences, or felonies of death. Perjury was an offence not capital, and of course, triable in the sessions.—There is no ambiguity in the words of the act.

We are told, that justices of the peace in *England*, notwithstanding the general expressions of stat. 34 *Edw.* 3. c. 1. seldom, if ever try any greater offence than small felonies within the benefit of clergy; and that they have no jurisdiction in cases of forgery or perjury at common law, according to the authorities cited. Be it so.—The law is so settled by judicial decisions. But in *Pennsylvania* the act of assembly has received a different construction, and the law is settled otherwise. It has been the uniform practice since the passing of the act, to prosecute forgery and perjury either in the sessions, or court of *Oyer* and *Terminer*, at the election of the person who conducts the prosecutions; and numerous judgments for those offences have been rendered in the sessions. The practical exposition of a law during a period of eighty-seven years, would have a most powerful effect, if even the words of it were dubious, which I firmly deny to be the case here.—I have no doubt, therefore, of the power of the Quarter Sessions to try the present indictment.

Exceptions have been taken to the judgment given upon the indictment, inasmuch as the prisoner was sentenced to undergo an imprisonment at hard labour in the gaol of *Berks* county, and during that time be confined, fed, clothed and treated as the law directs. It is admitted that the other parts of the sentence were conformable to the act for the punishment of perjury, or subornation of perjury, passed on the 3d of April 1804.—During the argument it was taken for granted, that the adjective *hard* was not to be found in the act, and so it appeared from vol. 7th of *Bioren's* edition, p. 393. But the 6th vol. of *Bailey's* edition (Pamphlet-Laws.) p. 513. inserts that word. I regret that such a variance should exist in the different editions of our laws, as it may lead to very serious consequences. I found myself therefore, under the necessity of examining the original law in the secretary's office, and found that the terms *hard labour* were included therein. The first ground of exception is therefore removed, but the last remains in full force. It has been said on

the part of the commonwealth, that the second section of this act repeals so much only of any former law as is thereby altered or supplied, and consequently the provisions in the close of the 4th section of the law of 5th April 1790 (in the text) as to *confining, feeding, clothing and treating a convict as the law directs*, remain in full force. It is contended that the punishment of perjury or subornation of perjury is merely cumulative; but if the court should be of a different opinion, those words in the judgment, are merely superfluous, and impose, at all events no hardship on the prisoner which is not warranted by law. To this it may be justly answered, that odious as the crime of perjury is, and injurious as it may be to the interests of society, the punishment prescribed by the legislature is sufficiently severe without recurring to forced construction:—a fine not exceeding \$500.—Imprisonment at hard labour, during any term not exceeding seven years,—disqualification from holding any office of honour, trust or profit, and disability as a witness, are serious evils, which would deter any man from the commission of an offence, who can be restrained by the passion of fear.—If the legislature had intended to have gone further they would have said so in express terms: They seem to have made these provisions as a complete substitute for the former punishment prescribed by law.

The words cannot be deemed superfluous. They have a definitive meaning in the act of 5th of April 1790, § 28. as to malefactors sentenced to hard labour in the several counties of this state, other than the county of Philadelphia. All power of self government is taken from them; and in case they shall refuse to labour, are idle, or are guilty of any trespass, all sustenance, except bread and water may be withheld from them; iron yokes may be put around their necks, chains upon their leg, or legs, &c. In the 4th, 5th, 6th and 10th sections of the act of 22d of April 1794, (*ante*.) we find superadded to the punishment at *hard labour* of the several offenders therein specified, that they shall be kept, treated and dealt with in the manner prescribed by the act of 5th of April 1790; but in the 7th section, it is declared, that one convicted of a second manslaughter shall undergo an imprisonment at hard labour for any time not less than six, nor more than fourteen years. Two conclusions may be fairly deduced herefrom; one, that where it was meant to inflict this mode of treatment, it is so expressed in plain terms; and in the second place, that these words carry with them a precise and distinct meaning. If the expressions of the act do not imperiously demand, that the *confining, feeding, clothing and treating the prisoner* as the law directs, should be made part of the sen-

tence, the insertion of them therein naturally leads to an undue severity on the part of the gaoler, and tends to mislead a ministerial officer in the discharge of his duty in a point which ought to be free from all ambiguity. I am therefore of opinion that the judgment of the Sessions should be reversed.

Brackenridge J. concurred, and added, that the quarter session, have jurisdiction of all offences *not capital*, and any *two of them*, without the president of the district, may try such offences as are not capital. Yet there is great reason why, in the absence of the president, they should be confined to *misdemeanors*. But this must be by an act of the legislature. And the reason, I take it, why it has not heretofore attracted the attention of the courts or of the country, has been, that seldom has the Court of Quarter Sessions, in the absence of the president, proceeded to the trial of any thing *above a misdemeanor*, and I may say, seldom even this, without the president, who was rarely absent, save in this district, from extraordinary indisposition.

Judgment of the Court of Quarter Sessions reversed.

BREAKERS OF PRISON—ESCAPE

By the act of 1718, § 18, he or they, who shall happen to break prison, shall not have judgment of life or member for breaking of prison only; except the cause for which he or they were taken and imprisoned did require such judgment, had he been convict according to law. Vol. 1, p. 117.

Breach of prison, by the offender himself, when committed for any cause, was felony at common law; or even conspiring to break it. Our act, which mitigated this severity, followed the statute of 1 Edw. 2. *de frangentibus prisonam*. And to break prison (whether it be the county gaol, or other usual place of security) when lawfully confined upon any inferior charge, is still punishable by the English law, as a high misdemeanor, by fine and imprisonment. For the act which ordains that such offence shall be no longer capital, never meant to exempt it entirely from every degree of punishment, see 4 *Black. Com.* 130; and also of escapes after an arrest, *ib.*

This offence, before conviction, does not appear to be otherwise altered by any act of assembly. But after conviction, it was to be punished by additional hard labour, and corporal punishment by the 32d section of the act in the text. And by the 13th section of the act of 22d of April, 1794, if any person sentenced to hard labour and solitary confinement, shall escape, or be pardoned, and after his escape or pardon shall be guilty of any such offence as on the 15th of Sept. 1786, was capital, or a felony of death without benefit of clergy, such person shall be sentenced

1790. to undergo an imprisonment for the term of twenty-five years, and shall be confined in the solitary cells, at the discretion of the inspectors.

So, rescue, is the forcibly and knowingly freeing another from an arrest or imprisonment, and is generally the same offence in the stranger so rescuing, as it would have been in a gaoler to have voluntarily permitted an escape. A rescue, therefore, of one apprehended for felony, is felony; for treason, treason; and for a misdemeanor, a misdemeanor also. But here likewise, as upon voluntary escapes, the principal must first be attained, or receive judgment, before the rescuer can be punished. See 4 *Black. Com.* 129—130—1.

BLASPHEMY.

This offence is punished, on conviction, by a fine of ten pounds, for the use of the poor, and three months imprisonment at hard labour, for the use of the poor. Vol. i. p. 6—7. And by act of 21st March, 1806, the fine may be any sum not more than ten pounds.

BARRATRY.

This common law offence is punishable by discretionary fine and imprisonment, by force of the statute of 34 Edw. 3. c. 1. Vol. i. p. 6.

BIGAMY.

This offence is punished by imprisonment at hard labour for any term not exceeding two years, by the 4th section of the act in the text. See vol. i. p. 29—30.

FORNICATION AND BASTARDY—ADULTERY—INCEST.

Incestuous fornication and adultery, besides the usual punishment, was subject to a fine of one third part of the offender's estate.—Vol. i. p. 26. Simple fornication, to a fine not exceeding ten pounds. Adultery, to a fine not exceeding fifty pounds, and imprisonment for a time not less than three, nor more than twelve months. See vol. i. p. 27. and the act of 21st March, 1806.

FORCIBLE ENTRY.

Forcible Entry, or *Detainer*, is, violently taking or keeping possession of lands and tenements, with menaces, force and arms, and without the authority of law. See vol. i. p. 1.

Removing Land Marks—*Cutting Timber Trees* (unlawfully) on another's land, declared to be punishable in the Quarter Sessions, by act of the 20th of March, 1810. See vol. i. p. 4—20.

RIOTS—ROUTS—UNLAWFUL ASSEMBLIES—AFFRAYS.

See the act against *Riots and Rioters*, vol. i. p. 30. and the notes thereto; and the statute of 34 Edw. 3. c. 1. in the note to chap. 41. vol. i. p. 6.

The punishment for these offences is discretionary fine and imprisonment, according to the laws of England.

The description of these offences need not be repeated here; they cannot be committed by fewer than *three* persons. And therefore, where several were indicted of a riot, and two only were found guilty, the judgment was arrested. But it would have been otherwise, it is said, if they had been indicted, that they, *with many others*, committed a riot. 1 *Ld. Raym.* 484. 1 *Str.* 196. And where *six* were indicted for a riot, two were convicted, two were acquitted, and two had died before trial. The court refused to arrest the judgment, for the jury having found two guilty of a riot, it must have been together with the two that were untried. 3 *Burr.* 1264. If a number of people assemble together, in a lawful manner, and upon a lawful occasion, and during the assembly a sudden affray happen, this will not make it a riot *ab initio*, but only a common affray. But if a number of people assemble in a riotous manner to do an unlawful act, and a person who was upon the place before, upon a lawful occasion; and not privy to their first design, joins them, he will be guilty of a riot equally with the rest. 2 *Ld. Raym.* 965.

Affrays, are the fighting of two or more persons in some public place, to the terror of the people; for if the fighting be in private, it is no *affray*, but an *assault*.—*Affrays* may be suppressed by any private person present, who is justifiable in endeavouring to part the combatants, whatever consequence may ensue. But more especially the constable, or other similar officer, however denominated, is bound to keep the peace; and to that purpose may break open doors to suppress an affray, or apprehend the affrayers; and may carry them before a justice, or imprison them by his own authority for a convenient time, till the heat is over. The punishment is also fine and imprisonment; the measure of which must be regulated by the circumstances of the case; for where there is any material aggravation, the punishment proportionably increases: as in the case of deliberate *duelling*; but with respect to this aggravated species of affray, see the act to restrain the horrid practice of *duelling* in this note. See 4 *Black. Com.* 145.

Obstructing the execution of lawful process, is an offence against public justice; and is at all times an offence of a very high and presumptuous nature; but more particularly so, when it is an obstruction of an arrest upon criminal process; and it has been holden, that the party opposing such arrest becomes thereby *particeps criminis*. See 1 *Hawk.* (folio) 121.

ASSAULT AND BATTERY—FALSE IMPRISONMENT.

In a public light, as a breach of the peace, assault and battery is indictable; and punishable with fine or imprisonment, or both; or with other ignominious penal-

ties, when committed with any very atrocious design, as an assault with intent to commit murder, rape, &c. As in these aggravated assaults, judgment of the pillory might formerly have been given; so now they may be punished by imprisonment at hard labour, by the 4th section of the act in the text, and the act of 4th of April, 1807.

An assault is an attempt, or offer, by force or violence, to do a corporal hurt to another. A battery, which always includes an assault, is the actual doing an injury, be it ever so small, in an angry or revengeful, or rude or insolent manner; as by spitting in his face, or violently justling him out of the way; or striking a horse on which one rides, whereby he is thrown (see 1 *Mod.* 24.—1 *Jones* 44.) or, wantonly doing an act, by which another is hurt, as pushing a drunken man upon another. *Buller* 16.

The plea must be not guilty, and whatever will justify, as self defence, or son assault, &c. may be given in evidence.

So, false imprisonment is indictable.—The law punishes the breach of the peace, the loss which the state sustains by the confinement of one of its members, and the infringement of the good order of society. For there can be no doubt, but that all crimes of a public nature, all disturbances of the peace, all oppressions, and other misdemeanors whatever, of a notoriously evil example, may be indicted at the suit of the commonwealth. See 4 *Black. Com.* 218.

We have seen, however, that a special provision has been made with respect to the costs on prosecutions of this nature, which is in daily practice.—And, as many complaints are daily made for very slight offences, upon the sudden heat of resentment, especially among the poorer class of citizens, who are illy able to bear the expences of the prosecution, the law has humanely (and in the editor's opinion, wisely) opened a door for repentance and reconciliation, before they enter the threshold of the court. By an act passed 17th of March, 1806, (chap. 2671.) any justice of the peace, before whom a complaint or charge may be made for an assault and battery, or for assault only, either before, or after recognizance is entered for the appearance of the defendant, may, before the next sessions, and he is enjoined, at the mutual request of the parties, by agreement signed by them mutually, to dismiss the same, and make a record thereof, for the fee of twenty five cents; and no fee shall be demanded of the justice, by any officer of the commonwealth, on account of settling any such dispute or complaint.—*Provided* the justice shall be fully satisfied that the settlement of such complaint or charge will not injure the safety of the citizens, or the peace of society.

Of binding to the peace, and surety for

good behaviour, see vol. i. p. 5.—4 *Black. Com.* 251.

CONSPIRACY.

By 33 *Edw.* 1. Stat. 2. It is declared, "Conspirators be they that do confeder or bind themselves by oath, covenant, or other alliance, that every of them shall aid and bear the other falsely and maliciously to indite, or cause to indite; [2] or falsely to move or maintain pleas; (3) and also such as cause children within age to appeal men of felony, whereby they are imprisoned, and sore grieved; (4) and such as retain men in the country with liveries or fees for to maintain their malicious enterprises, and this extendeth as well to the takers, as the givers."

A conspiracy to indict an innocent man of felony, falsely and maliciously, who is accordingly acquitted, is an abuse and perversion of public justice, and is indictable. The punishment is by fine and imprisonment—and the pillory having been formerly part of the punishment—This offence may be now punished under the 4th section of the act in the text, and the act of 4th of April, 1807. There must be at least two to form a conspiracy.—4 *Black. Com.* 156.

Unlawful combinations are also known at the common law, as conspiracies. Thus several journeymen tailors were indicted for a conspiracy among themselves, to raise their wages. This was held to be an offence at common law, for the conspiracy is illegal, whether the matter be lawful or not. 8 *Mod.* 10.—And the same doctrine was held in the journeymen shoemaker's case, in the Mayor's Court of Philadelphia, by a very correct judge.—One only cannot be convicted of this crime—Fewer than two cannot conspire.

CHEAT.

Cheats indictable at common law, may, in general, be described to be, deceitful practices, in endeavouring to defraud, or defrauding another of his known right, by means of some artful device; contrary to the plain rules of common honesty; as by playing with false dice; or by causing an illiterate man to execute a deed to his prejudice, by reading it over to him in words different from those in which it was written; or by suppressing a will, &c.

This offence is punishable, generally, by fine and imprisonment, or by fine only, by the discretion of the judges, which is regulated by the circumstances of each particular case. But it is said, cheating with false dice, especially if the offender be a common gambler, might be punished with infamous punishment. See 1 *Hawk.* (vol. 1) 157—8. See 1 *Dallas* 47.

BRIBERY.

Bribery, is an offence against public justice, and is, when a judge or other person concerned in the administration of justice, takes any undue reward to influence his behaviour in his office. This offence is punished, in inferior offices,

1790. with fine and imprisonment; and in those who offer a bribe, though not taken, the same. See 4 *Black. Com.* 39—40. See the case of the *King v. Vaughan*, which was an attempt to corrupt a minister of state, for the purpose of procuring an office. 4 *Burr.* 2494. So an attempt to corrupt and bribe the commissioner of the revenue of the United States, with a view to accomplish a contract, which he had power to form. 2 *Dallas*, 384.

In a public officer, or a judge, this offence is impeachable, as well as indictable, and may be punished by removal from office, and disqualification. See the Constitution.

As to bribery at elections, see the general election law of 15th of February, 1799, (chap. 2009.)

EXTORTION.

This is an abuse of public justice, which consists in any officer's unlawfully taking, by colour of his office, from any man, any money, or thing of value, that is not due to him, or more than is due, or before it is due. The punishment is fine and imprisonment. See 4 *Black. Com.* 141.

A judge, in *Pennsylvania*, receives no fees, or perquisites. In a justice of the peace, it would be a high misdemeanour, and a forfeiture of his office, which he holds only during *good behaviour*. In offices held during pleasure, the power of removal by the governor, would, no doubt, be promptly exercised. As to extortion of Gaoler, Bailiff, or other officer, see vol. i. p. 186—8.

EMBRACERY.

Embracery is an attempt to influence a jury corruptly to one side, by promises, persuasions, entreaties, money, entertainments, and the like. The punishment for the person embracing is by fine and imprisonment: and for the juror so embraced, if it be by taking money, the punishment is, (by divers statutes in the reign of *Edward 3.*) perpetual infamy, imprisonment for a year, and forfeiture of the tenfold value. See *Black. Com.* 140.

The English statutes, which extend to, and form part of the law of *Pennsylvania*, are:

5 *Edward 3.* c. 10. *Item*, it is accorded, that if any juror in assizes, juries or inquests, take of the one party or the other, and be thereof duly attainted, that hereafter he shall not be put in any assizes, juries, or inquests, and nevertheless shall be commanded to prison, [and further ransomed at the king's will] and the justices before whom such assizes, juries and inquests shall pass, shall have power to enquire and determine according to this statute.

34 *Edward 3.* c. 8. *Item*, that in every plea, whereof the inquest or assize doth pass, if any of the parties will sue

against any of the jurors, that they have taken of his adversary, or of him, for to give their verdict, he shall be heard, and shall have his plaint by bill presently before the justices before whom they did swear, and that the juror be put to answer without any delay; and if they plead to the country, the inquest shall be taken presently. And if any man other than the party, will sue for the king (the commonwealth) against the juror, it shall be heard and determined as afore is said. And if the juror be attainted at the suit of other than the party, and maketh fine, the party that such shall have half the fine; and that the parties to the plea shall recover their damages by the assessment of the inquest; and that the juror so attainted have imprisonment for one year, which imprisonment the king granteth that it shall not be pardoned for any fine. And if the party will sue by writ, before other justices, he shall have the suit in the form aforesaid. [See the form of this writ in *Reg. Brev.* p. 188.]

38 *Edward 3.* Stat. 1. c. 12. *Item*, as to the article of jurors, in the four and thirtieth year "It is assented and joined to the same, that if any juror in assizes sworn, and other inquests to be taken the king and party, or party and party, do any thing take by them, or other of the party plaintiff or defendant, to give their verdict, and hereof be attainted by process contained in the same article, be it at the suit of the party that will sue for himself or for the king, or any other person, every of the said jurors shall pay ten times as much as he has taken; and he that will sue shall have the one half, and the king the other half. And that all the embracers that bring or procure such inquests, in the country, to take gain or profit, shall be punished in the same manner and form as the jurors; and if the juror or embracer so attainted have not wherewith to make gree [*satisfaction*] in the manner aforesaid, he shall have the imprisonment of one year. And the intent of the king, of the great men, and of the commons is, that no justice, nor other minister shall inquire of office upon any of the points of this article, but only at the suit of the party, or of other, as aforesaid."

OPPRESSION BY OFFICERS.

Another offence against public justice, which is a crime of deep malignity; and so much the deeper, as there are many opportunities of putting it in practice, and the power and wealth of the offenders may often deter the injured from a legal prosecution. This is the oppression, and tyrannical partiality of judges, justices, and other *magistrates*, in the administration, and under the colour of their office. And when prosecuted, either by impeachment, or indictment, is sure to be severely punished with forfeiture of their offices

and, if by indictment, by fine and imprisonment, regulated by the nature and aggravations of the offence committed.—

4 *Black. Com.* 141.

NEGLECT OF DUTY.

The negligence of public officers, entrusted with the administration of justice, as sheriffs, coroners, constables, and the like, is punishable by fines. And particular penalties are frequently inflicted by special acts of the assembly, where particular duties are enjoined upon officers, or others. See 4 *Black. Com.* 140.

Neglecting to join the *posse comitatus*, or power of the county, being thereunto required by sheriffs, justices, &c. is punishable.

By statute of 3 *Edw.* 1, c. 9. "It is provided, that all generally be ready and apparelled, at the commandment and summons of Sheriffs, and at the cry of the country, to sue and arrest felons, when any need is." [as well within franchise, as without.]

Disobedience to an act of assembly, where no particular penalty is assigned, is yet punishable, by consequence, for the contempt, by discretionary fine and imprisonment. See 4 *Black. Com.* 122.

NUISANCE.

Common nuisances, are a species of offence against the public order, and economical regimen of the state; being either the doing of a thing to the annoyance of all the citizens, or neglecting to do a thing which the common good requires. As such they are indictable, as it would multiply suits, by giving every man a separate action, for what damns him in common, only, with the rest of his fellow citizens.

Of this nature are, annoyances, in *highways, bridges, rivers*, by rendering the same inconvenient or dangerous to pass; either positively, by actual obstructions, or negatively by want of reparations.

With respect to the roads and highways, an attempt was made by the 13th section of the "act to regulate arbitrations and proceedings in courts of justice," to destroy the public prosecution by indictment at common law, and to restrict the remedy to the summary power given to the justices in the road law. But this was speedily found to be an inefficient remedy; and the indictment was restored by the 4th section of the act of 28th of March, 1808, (chap. 2987.) So that in this case, the indictment is now the statute remedy; but the summary power of the justices, also remains.

As to rivers, see all the acts declaring certain rivers, public highways, and vol. 1. p. 325.

All those kinds of nuisances, which when injurious to a private man, are actionable; are, when detrimental to the public, punishable by public prosecution, and subject to fine according to the quantity of the misdemeanor; such as offensive

trades and manufactures; particularly the keeping hogs in any city or market town. *Salk.* 460.

All disorderly houses, inns or ale-houses, bawdy-houses, gaming-houses, unlicensed stage-plays, booths and stages for rope-dancers, mountebanks and the like, are public nuisances, and may, upon indictment, be suppressed and fined. 1 *Hawk.* (folio) 198. 225.

As to inns, or taverns, See vol. 1, p. 25, 73, 127.

So, open and notorious *lewdness*; either by frequenting houses of ill fame; or by some grossly scandalous and public indecency, is indictable, and punishable by fine and imprisonment. 4 *Black. Com.* 64.—A wife may be indicted and punished with her husband for keeping a *brothel*; for this is an offence touching the domestic economy or government of the house, in which the wife has a principal share; and is also such an offence, as the law presumes to be generally conducted by the intrigues of the female sex. And in all cases, where the wife offends alone, without the company or coercion of her husband, she is responsible for her offence, as much as any single woman. *Ib.* 29.

Lotteries are declared to be public nuisances. Vol. 1, p. 246.

The making and selling fire-works and squibs, or throwing them about in any street, on account of the danger that may ensue, is a common nuisance.

Our acts of assembly, therefore inflict penalties, 1st, on breaching vessels, and heating with blazing fire, pitch &c. at the wharves in the city, &c. or keeping fire on board any vessel, after a certain hour in the night without licence. Vol. 1. p. 129. and the act of 29th of March, 1803, (chap. 2358)—2d on building cooper's shops, and bake houses, unless in a certain manner. Vol. 1. p. 194.—3d, keeping hay and faggots in the city, unless under certain regulations. *Ib.* p. 195.—4th, on firing guns within towns and boroughs, making or selling squibs, rockets, or other fire-works, or casting or firing any of them without licence, or firing chimnies in any town or borough, *Ib.* 208, 249, 319.—5th setting fire to woods or marshes, act of 18th of April, 1794, (chap. 1732.)

Eaves Droppers, or such as listen under the walls, or windows, or the eaves of a house, to hearken after discourse, and thereupon to frame slanderous and mischievous tales, are a common nuisance, are indictable, and punishable by fine, and to find surety for good behaviour.—So, a common scold is a nuisance to her neighbourhood. See 4 *Black. Com.* 167—8

IDLENESS.

Idleness, (the root of evil) is a high offence against the public economy. By ancient statutes, vagabonds are described

1790. to be, "such as wake on the night, and sleep on the day, and haunt customable taverns, and ale houses, and routs about, and no man wot from whence they come, ne whether they go." And by our act of assembly, "all persons, who, not having wherewith to maintain themselves and families, live idly and without employment, and refuse to work, for the usual, and common wages given to other labourers in the like work in the place where they then are; and all persons going about from door to door, or placing themselves in streets, highways, or other roads, to beg, or gather alms in the place where they dwell, and all other persons wandering abroad and begging; and all persons coming from the neighbouring states, into any place in this state, and shall be found loitering or residing therein, and shall follow no labour, trade, occupation or business, and have no visible means of subsistence, and can give no reasonable account of themselves, or their business in such place, shall be deemed, and are declared to be, idle and disorderly persons." They shall be punished, on conviction, before a Justice, in the work-house, or gaol, at hard labour not exceeding one month. And the constable having notice, and neglecting to apprehend them, and to convey them to the Justice, shall forfeit and pay ten shillings to the use of the poor, vol. 1, pa. 102, 268.

USURY.

Usury, is an unlawful contract, upon the loan of money, to receive the same again with exorbitant increase.

If any person shall receive or take more than six pounds *per cent.* *per annum*, he shall, upon conviction, forfeit the money and other things lent, &c. vol. 1, pa. 156.

LIBEL.

Libels, in their largest, and most extensive sense, signify any writings, pictures or the like, of an immoral, or illegal tendency. In the common acceptation, they are malicious defamations of any person, made public, by either printing, writing, signs or pictures, in order to provoke him to wrath, or expose him to public hatred, contempt and ridicule. Their direct tendency, is the breach of the public peace, by stirring up the objects of them to revenge, and perhaps to bloodshed. 4 *Black. Com.* 150. But see the constitution; and the act of 16th of March, 1809, before in this note.

CONTEMPTS.

See the act of 3d of April, 1810, before in this note.

MALICIOUS MISCHIEF.

Malicious mischief, or damage, is that species of injury to private property, which the law considers as a public crime. This is such as is done, not *animus*

furandi, or with an intent of gaining by another's loss; but either out of a spirit of wanton cruelty, or black, and diabolical revenge. In which it bears a near relation to the crime of arson; for as that affects the habitation, so does this, the other property of individuals.

The offences in *England* under this head, are generally statute offences, and the damage was considered as a trespass at common law; and it is said the line is not distinctly drawn. But it is a principle, that every act, of a public evil example, and against good morals, is an offence indictable at common law.

Thus, maliciously, wilfully and wickedly killing a horse, was held to be indictable, and by *McKean, C. J.* on examining the cases, we have not found the line accurately drawn; but, it seems to be agreed, that whatever amounts to a *public wrong*, may be made the subject of an indictment. The poisoning of chickens, cheating with false dice, fraudulently tearing a promissory note, and many other offences of a similar description, have heretofore been indicted in *Pennsylvania*; and 12 Mod. 337, furnishes the case of an indictment for killing a dog, an animal of a far less value than a horse. Breaking windows by throwing stones at them, though a sufficient number of persons were not engaged to render it a riot; and the embezzlement of public monies, have, likewise, in this state, been deemed *public wrongs*, for which the private sufferer was not alone entitled to redress; and unless, indeed, an indictment would lie, there are some very heinous offences, which might be perpetrated with absolute impunity, since the rules of evidence, in a civil suit, exclude the testimony of the party injured, though the nature of the transaction, generally, makes it impossible to produce any other proof. We entertain no doubt upon the subject. 1 *Dallas*, 335.

By an act passed 21st of March, 1772, (chap. 652.) vol. 1, pa. 382. If any person or persons shall maliciously and voluntarily break, or take off or from the door of any inhabitant within this province, any brass, or other knocker, affixed to such door, or shall maliciously or voluntarily cut, break, or otherwise destroy, any leaden, tin or copper spout, or any part thereof, affixed to any such house, every person so offending, being thereof legally convicted, shall forfeit and pay the sum of twenty-five pounds, for every such knocker, or spout so broken, or taken away, or cut or otherwise destroyed, or be publicly whipped, &c.

If any person or persons, shall maliciously or voluntarily, break, take down or destroy or deface any sign put up by any inhabitant of this province, to denote his, her or their place of abode, occupation, business or employment, every such person or persons so offending, being there-

of legally convicted, shall forfeit and pay the sum of ten pounds for every such offence, or be publicly whipped, &c.

One half of the fines is appropriated to the party grieved, the other half to the use of the poor.

These offences are now to be punished, if the fine be not paid, by the 4th section of the act in the text, and the act of 4th of April, 1807.

Wantonly and maliciously cutting ferry ropes stretched across rivers, punishable by fine, on conviction in the Quarter Sessions, vol. 1, pa. 266.

Wilfully, or maliciously breaking, throwing down, or extinguishing any lamp hung up, or set out, to light the city of Philadelphia; or wilfully and maliciously damaging the post, iron, or other furniture thereof, punishable by fine, on conviction in the Sessions, vol. 1, pa. 357.

SUMMARY CONVICTIONS.

VICE AND IMMORALITY.

The general act to prevent vice and immorality, now in force, was passed 22d of April, 1794, (chap. 1746,) and the offences therein enumerated, are punishable by summary conviction before a justice.

1. Breach of the Sabbath, penalty four dollars.

2. Profane cursing or swearing, penalty sixty-seven cents for every profane curse or oath, or on non payment or inability to pay, commitment to the house of correction for not more than twenty-four hours, for an inferior offence therein described, forty cents, or similar commitment for twelve hours.

3. Drunkenness, penalty sixty-seven cents, or similar commitment, not exceeding twenty-four hours.

4. Cock fighting for money or other valuable thing, or promoting or encouraging it by betting thereon; ballet playing in any place, for money, or other valuable thing; or, on any public highway, with or without a bet. Playing at cards, dice, billiards, bowls, shuffleboards, or any game of hazard or address, for money, or other valuable thing, penalty three dollars for every such offence.

5. Entering, starting or running any horse, mare or gelding, for any plate, prize, wager, bet, or sum of money, or other valuable thing; penalty, twenty dollars.

6. Any tavern keeper, public house keeper, keeper of a tippling house, or other retailer of wine, spirituous or other strong drink who shall incite, promote, or encourage any games of address, hazard, cock fighting, ballet playing, or horse racing, whereat any money, or other valuable thing, shall be betted, staked, striven for, won or lost, or who shall furnish any wine, spirituous liquors, beer, cyder, or

other strong drink to any of the persons who shall be assembled, or attending upon any game &c. or shall permit or allow of any (such) game, &c. or any game, device or manner, to be practiced, played or carried on within his or her dwelling house, out house, shed or place, in his or her occupancy, every such tavern keeper, &c. being legally convicted before a Justice, or in the Quarter Sessions &c. shall forfeit and pay for every such offence, fourteen dollars; and if he be a licenced public house keeper, &c. his licence shall be void, and he shall be incapable of being licenced for one year; and upon a second conviction, he shall forfeit and pay twenty-eight dollars, and be forever incapable of being licenced, &c. But he may appeal from the conviction to the Sessions, whose determination shall be final.

7. No Billiard table, EO table, or other device, for the purpose of gaming for money, or other valuable thing, shall be set up, kept, or maintained, in any dwelling house, out house, or place, occupied by any tavernkeeper, &c. whether such person have a licence, or keep a tippling house, on pain of forfeiting such billiard table, EO table or other device, and also twenty-six dollars, on conviction, before a Justice, or in the Quarter Sessions, &c. The Judges of the Sessions to enquire, &c. and no licence to be granted to such person.

8. Money lost at play, shall not be recovered; or may be recovered back.

9. Penalty on sending challenges to fight, &c. (supplied *ante*.)

10. Prosecutions to be within thirty days after the offence committed.

See the act against masquerades, *ante*.

There are numerous pecuniary fines, and other penalties and forfeitures, inflicted by various acts of Assembly, for smaller offences, or petty misdemeanors, which would swell this note to an unreasonable length to enumerate them here. Several of them are recoverable by indictment, and many by action of debt, *qui tam*, in courts of record; and very many others upon summary conviction before Justices of the peace; and not a few penalties are inflicted for disobedience to or neglect of duties enjoined under particular laws, which can scarcely be called criminal offences being the very lowest species of contempt of the authority of laws. The whole of them will, however be arranged, in the general index, under the title "*penalties*." One high misdemeanor, created by act of Assembly, cannot with propriety be omitted here; which is,

Removing negro, or mulatto slaves, or servants for term of years, out of the state; separating children from their parents, under a certain age; or, forcibly or fraudulently carrying off, or seducing

1790. away such negro, or mulatto slaves or servants; or building or equipping vessels to be employed in the slave trade. These offences are all, except the forcible abduction punishable only by action for the particular penalty; but the forcibly carrying away such slave or servant, is punishable by indictment, and on conviction, with the forfeiture of one hundred pounds, and imprisonment at hard labour, for any time not less than six months, nor more than twelve months. Act of 29th of March, 1788. (chap. 1334.)

OF PRINCIPAL AND ACCESSORY.

A man may be *principal* in an offence in two degrees. A principal, in the first degree, is he that is the actor, or absolute perpetrator of the crime; and in the second degree, he who is present, aiding and abetting the fact to be done. And there may be a constructive presence, as when one commits a robbery, or murder, and another keeps watch or guard at some convenient distance.

In case of murder by poisoning, a man may be a principal felon, by preparing and laying the poison, &c. and yet not administer it himself, nor be present when the very deed of poisoning is committed. And so with regard to other murders committed in the absence of the murderer, by means which he had prepared before hand, and which could not probably fail of their mischievous effects; as exciting a madman to commit murder; laying traps, or pitfalls for another whereby he is killed, &c. In such case he must be guilty as principal in the first degree: for he cannot be called an accessory, that necessarily supposing a principal; and the poison, the pitfall, or the madman cannot be held principal; being only the instruments of death. As he must therefore be certainly guilty, either as principal or accessory, and cannot be so as accessory, it follows that he must be so as principal; and if principal, then in the first degree; for there is no other criminal, much less superior in the guilt, whom he could aid, abet, or assist.

An *accessary*, is he who is not the chief actor in the offence, nor present at its performance, but is somehow concerned therein, either *before* or *after* the fact committed.

In High Treason there are no accessories, but all are principals; the same acts that make a man accessory in felony, making him a principal in High Treason, upon account of the heinousness of the crime. In petit treason, murder and felonies there may be accessories, except only in those offences, which by judgment of law are sudden

and unpremeditated, as manslaughter and the like; which therefore cannot have any accessories *before* the fact.

In petty larceny, and in all crimes under the degree of felony, there are no accessories either *before*, or *after* the fact; but all persons concerned therein, if guilty at all, are principals, the same rule holding with respect to the highest and lowest offences.

The accessory cannot be guilty of a higher crime than his principal; being only punished as a partaker of his guilt.

Accessory *before* the fact, is one, who being absent at the time of the crime committed, doth yet procure counsel, or command another to commit a crime. Herein *absence* is necessary to make him an accessory; for if such procurer, or the like, be *present*, he is guilty of the crime as principal.

An accessory *after* the fact may be, where a person, knowing a felony to have been committed, receives, relieves, comforts, or assists the felon. It is requisite therefore, that he *knows* of the felony committed. In the next place, he must *receive, relieve, comfort, or assist* the felon. And, generally any assistance whatever, given to a felon, to hinder his being apprehended, tried or suffering punishment, makes the assistor an accessory, as furnishing him with a horse to escape his pursuers, money or victuals to support him, a house, or other shelter, to conceal him, or open force or violence to rescue or protect him. So, to convey instruments to a felon to enable him to break gaol, or to bribe the gaoler to let him escape, makes a man accessory to the felony. But the felony must be complete at the time of the assistance given, else it does not make the assistant accessory. As if one wounds another mortally, and after the wound given, but before death ensues, a person assists, or receives the delinquent; this does not make him accessory to the homicide; for until death ensues, there is no felony committed, yet so strict is the law where a felony is actually complete, in order to do effectual justice, that the nearest relations are not suffered to aid or receive one another. If a parent assists his child, or the child his parent, if the brother receives the brother, the master his servant, or the servant his master, or even if the husband relieves his wife, who have any of them committed a felony, the receivers become accessories *after the fact*. But the wife cannot become accessory by the receipt and concealment of her husband; for she is presumed to act under his coercion, and therefore she is not bound, neither ought she, to discover her husband.

To buy or receive stolen goods, knowing them to be stolen, was at common law a mere misdemeanor, and did not make the receiver accessory to the theft, because he received the *goods* only, and not the *felon*. But by the act of 1718, (vol. 1, page 116,) if any person or persons shall receive or buy any goods or chattels that shall be feloniously taken or stolen, knowing the same to be stolen, and being convicted thereof, if they pray the benefit of that act, in lieu of clergy, shall be *burnt in their hands*. And the same punishment was inflicted on conviction of *receiving, harbouring, or concealing* any robbers, burglars, felons or thieves.

Buyers and receivers of stolen horses, knowing them to be such were to be punished in the same manner as the principal felon, by the act of 21st of February, 1767, (vol. 1, page 273.)

By the 4th section of the act in the text, accessories *after* the fact in any felony, and receivers of stolen goods, &c. are to be punished by imprisonment at hard labour, &c. for any term not exceeding two years. This remains unaltered.

The law respecting the punishment of accessories *before* the fact, will be found in the acts which relate to the various principal offences.

If the principal felony be committed in one county, and the fact or crime of accessory, be committed in another; the accessory may be indicted in the county where his offence was committed, and shall be as good and effectual in law, as if the principal offence had been done or committed in the same county, vol. 1, page 119.

Formerly no man could be tried as accessory, till after the principal was convicted, or at least he must have been tried at the same time with him; in which case the jury must be charged to inquire first of the principal; and if they are satisfied of his guilt, then of the accessory, but if the principal be not guilty, both must be acquitted.

The accessory may, *if he choose*, be brought to his trial *before* the conviction or attainder of the principal. But in case he be convicted, it seems necessary to respite judgment until the principal be convicted and attainted; for if the principal be after acquitted, the conviction of the accessory is annulled, and no judgment ought to be given against him.

If principal be convicted of any capital crime, made felony of death, standing mute, &c. it is made lawful to proceed against the accessory either before or after the fact, in the same manner as if the principal felon had been attainted hereof, notwithstanding any such prin-

cipal felon shall be admitted to the benefit of clergy, pardoned, or otherwise delivered before attainder; and every such accessory, if convicted, &c. shall suffer the same punishment as he should have suffered, if the principal had been attainted. And, if any principal robber, burglar, felon or thief, *cannot be taken*, so as to be prosecuted and convicted for any such offence, nevertheless it shall be lawful to prosecute and punish every person or persons, buying or receiving any goods stolen by such principal felon, knowing the same to be stolen, as for a *misdemeanor*, to be punished by fine and imprisonment, or other such corporal punishment as the court shall think fit to inflict, although the principal felon be not before convicted of the said felony; which punishment shall exempt the offender from being punished as accessory, if such principal felon shall afterwards be taken and convicted. Act of 1718, vol. 1, page 116-17.

And the same provision is made as to accessories after the fact in all cases of felony of death, robbery and burglary, by the 8th section of the act of 23d of September, 1791, (chap. 1572.)

These provisions are similar to those of the English statutes of 1st and 5th of *Ann.* Upon which, Judge *Foster* observes, that where the principal is amenable, the prosecutor has no option whether to proceed against the receiver as for felony or misdemeanor, he must proceed as for felony. If he be not amenable, and the prosecutor choose to wait for his conviction he may do so, and then proceed against the receiver as for felony; or, at his own pleasure, as for a misdemeanor without waiting till the principal shall be amenable. Under these limitations, and these only, he conceives the prosecutor has an option.

Though a man be indicted as accessory and acquitted, he may afterwards be indicted as principal; for an acquittal of receiving and counselling a felon, is no acquittal of the felony itself, but is matter of some doubt, whether, if a man be acquitted as principal, he can be afterwards indicted as accessory *before* the fact; since those offences are frequently very near allied, and therefore an acquittal of the guilt of one may be an acquittal of the other also, (but see *Post.* 361.) But it is clearly held that one acquitted as principal may be indicted as an accessory *after* the fact; since that is always an offence of a different species of guilt, principally tending to evade the public justice, and is subsequent in its commencement to the other. See 4 *Black. Com.* 3140, *Post. Disc.* 3, 341 to 375.

1790. *The following English statutes are reported by the Judges to extend to Pennsylvania.*

4 Edw. 3, C. 2. The authority of Justices of assize, Gaol Delivery, and of the peace. “(6) And the Justices assigned to deliver the gaols shall have power to deliver the same gaols of those that shall be indicted before the keepers of the peace; (7) and that the said keepers shall send their indictments before the Justices, and they shall have power to enquire of Sheriffs, Gaolers and others, in whose ward such indicted persons shall be, if they make deliverance, or let to mainprize any so indicted, which be not main pernible, and to punish the said Sheriffs, Gaolers, and others, if they do any thing against this act.”

25 Edw. 3, stat. 5, C. 3. “*Item*, it is accorded, that no indictor shall be put in inquests upon deliverance of the inditees of felonies or trespass, if he be challenged for that same cause by him which is so indicted.”

The act that any indictment lacking these words, *vi et armis*, shall be good.

37 Hen. 8, C. 8. “Be it enacted, &c. that these words, *vi & armis*, viz. *cum baculis*, &c. or such other like, shall not of necessity be put or comprised in any inquisition or indictment; nor that the party or parties being hereafter indicted of any offence, shall have or take any advantage by writ, or writs of error, plea or otherwise, to annul or avoid any such inquisition or indictment, for that, that the said words, *vi et armis*, &c. or any of the same or like words shall not be put or comprised in the said inquisitions, or indictments: but that the same inquisitions or indictments, and every of them, lacking the same words, *vi et armis*, &c. or any of them, shall from thenceforth, by the authority aforesaid, be taken, deemed and adjudged, to all intents, constructions and purposes, as good and effectual in the law, as the same inquisitions and indictments, having the said words, *vi et armis*, &c. comprised and put in every of the same inquisitions and indictments were or heretofore have been taken, deemed or adjudged; any law, usage or custom heretofore had and used to the contrary notwithstanding.”

An act for trial of murders and felonies committed in several counties, 2 and 3 Edw. 6, C. 24. “For as much as the most necessary office and duty of the law is to preserve and save the life of man, and condignly to punish such persons that unlawfully and wilfully murder, slay or destroy men, and also that another office and duty of law

is to punish robbers and thieves, which daily endeavour themselves to rob and steal, or give assistance to the same, and yet by craft and cautele do escape from the same without punishment.

2. And where it often happeneth and cometh in ure in sundry counties of this realm, that a man is feloniously stricken in one county, and after dieth in another county, in which case it hath not been founden by the laws or customs of this realm, that any sufficient indictment thereof, can be taken in any of the said two counties, for that by the custom of this realm the Jurors of the county where such party died of such stroke, can take no knowledge of the said stroke being in a foreign county, although the same two counties and places adjoin very near together; ne the Juries of the county where the stroke was given cannot take knowledge of the death in another county, although such death most apparently come of the same stroke; so that the king's majesty within his own realm cannot, by any laws yet made or known, punish such murderers or manquellers, for offences in this form committed and done; (2) nor any appeal at some time may be for the same, but doth also fail, and the said murderers and manquellers escape thereof without punishment, as well in cases where the counties where such offences be committed and done may join, or otherwise where they may not join. (3.) And also it is a common practice amongst errant thieves and robbers in this realm, that after they have robbed or stolen in one county, they will convey their spoil, or part thereof so robbed and stolen, unto some of their adherents into some other county where the principal offence was not committed ne done, who knowing of such felony, willingly and by false covin receiveth the same: (4) In which case, although the principal felon be after attainted in one county, the accessary escapeth by reason that he was accessary in another county, and that the Jurors of the said other county, by any law yet made, can take no knowledge of the principal felony ne attainer in the first county, and so such accessaries escape thereof unpunished, and do often put in ure the same, knowing that they may escape without punishment; (5) For redress and punishment of which offences, and safeguard of man's life, be it enacted by the authority of this present parliament, that when any person or persons hereafter shall be feloniously stricken or poisoned in one county, and die of the same stroke or poisoning in another county, that then an indictment thereof founden by the Jurors of the county where the death shall happen, whether it shall be founden before the Coroner upon the sight of such death

body, or before the Justices of peace, or other Justices or commissioners who shall have authority to enquire of such offences, shall be as good and effectual in the law, as if the stroke or poisoning had been committed and done in the same county where the party shall die, or where such indictment shall be so founden; any law or usage to the contrary notwithstanding.

3. And that the Justices of Gaol Delivery and *Oyer* and *Terminer* in the same county where such indictment at any time hereafter shall be taken, and also the Justices of the king's bench, after such indictment shall be removed before them, shall and may proceed upon the same in all points, as they should or ought to do, in case such felonious stroke and death thereby ensuing, or poisoning and death thereof ensuing, had grown all in one and the same county: (2) And that such party to whom appeal of murder shall be given by the law, may commence, take and sue appeal of murder in the same county where the party so feloniously stricken or poisoned shall die, as well against the principal and principals as against every accessory to the same offences in whatsoever county or place the accessory or accessories shall be guilty to the same. (3) And further, the Justices before whom any such appeal shall be commenced, sued and taken, within the year and day after such murder and manslaughter committed and done shall proceed against all and every such accessory and accessories in the same county where such appeal shall be so taken, in like manner or form as if the same offence or offences of accessory or accessories had been committed and done in the same county where such appeal shall be so taken, as well concerning the trial by the Jurors, or twelve men of such county where such appeal or appeals shall be hereafter taken upon the plea of not guilty pleaded by such offender or offenders, as otherwise.

4. And further be it enacted by the authority aforesaid, That where any murder or felony hereafter shall be committed or done in one county, and another person or mo shall be accessory or accessories in any manner of wise to any such murder or felony in any other county, that then an indictment found or taken against such accessory and accessories upon the circumstance of such

matter before the Justices of the peace or other Justices or Commissioners, to enquire of felonies in the county where such offences of accessory or accessories in any manner of wise shall be committed or done, shall be as good and effectual in the law, as if the said principal offence had been committed or done within the same county where the same indictment against such accessory shall be found; (2) and that the Justices of *Gaol Delivery*, or *Oyer* and *Terminer*, or two of them, of or in such county where the offence of any such accessory shall be hereafter committed and done, upon suit to them made, shall write to the *Custos Rotulor*, or keepers of the records where such principal shall be hereafter attained or convicted, to certify them whether such principal be attained, convicted or otherwise discharged of such principal felony; who, upon such writing to them or any of them directed, shall make sufficient certificate in writing under their seal or seals to the said Justices, whether such principal be attained, convicted, or otherwise discharged, or not; (3) and after they that so shall have the custody of such records, do certify that such principal is attained, convicted or otherwise discharged of such offence by the law; that then the Justices of *Gaol Delivery*, or of *Oyer* and *Terminer*, or other there authorized, shall proceed upon every such accessory in the county where such accessory or accessories became accessory, in such manner and form as if both the said principal offence and accessory had been committed and done in the said county where the offence of accessory was or shall be committed or done; (4) and that every such accessory, and other offenders above expressed, shall answer upon their arraignments, and receive such trial, judgment, order and execution, and suffer such forfeitures, pains and penalties, as is used in other cases of felony; any law or custom to the contrary heretofore used in any wise notwithstanding."

With respect to bail in criminal cases, and the statutes of 1 and 2 *Philip* and *Mary*, and 2d and 3d *Philip* and *Mary*, c. 10. See vol. 1, pa. 56-7, (chap. 151,) and the notes thereto.

(* Omitted by mistake in page 545.)

Rules, Orders, and Regulations for the Gaol of the city and county of Philadelphia.

1. No persons whatever shall be admitted to a communication with the prisoners, except the keeper, his de-

puties, servants or assistants, the Inspectors, officers of justice, counsellors or attorneys at law employed by a prisoner, ministers of the gospel, or persons authorized by two of the Inspectors.

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11. The males and females shall be employed, and shall eat and be lodged in separate apartments, and shall have no intercourse or communication with each other.

111. The prisoners shall be constantly employed in such labour as the keeper, (with the concurrence of the Inspectors,) may consider best adapted to their age, sex and circumstances: Regard being had to that employment which is most profitable.

iv. If any of the prisoners shall be found remiss or negligent in performing what is required of them, to the best of their power and abilities, or shall wilfully waste or damage the goods committed to their care, they shall be punished for every such offence, as may be hereafter directed.

v. If any of the prisoners shall refuse to comply with these regulations, or to obey the officers of the prison, or shall be guilty of profane cursing or swearing, or of any indecent behaviour, conversation or expression, or of any assault, quarrel, or abusive words to or with any other person, they shall be punished for the same, in manner hereafter directed.

vi. The convicts, prisoners for trial, servants, runaways, and vagrants, shall be separately fed, lodged and employed.

vii. Offenders shall be reported to the Inspectors, and punished by close, solitary confinement, and their allowance of food reduced—But in cases where the security of the prison is in danger, or personal violence offered to any of the officers, then the said officers shall use all lawful means to defend themselves, and secure the authors of such outrage.

viii. No officer or other person shall sell any thing used in the prison, nor buy, sell or barter any article by which they can have benefit; neither shall they suffer any spirituous or fermented liquors to be introduced, except such as the keeper may use in his own family, or for medical purposes prescribed by the attending physician, under the penalty of five pounds, if an officer, and of dismissal from office; or if a prisoner, he shall be proceeded against as in the seventh article.

ix. The prisoners on their first admission shall be separately lodged, washed, and cleansed; and shall continue in such separate lodging, until it shall be deemed prudent to admit them among the other prisoners, and the clothes in which they were committed shall be baked, fumigated, and laid by; to be returned them at their discharge, and during their confinement to be cleaned according to law.

x. Any persons detected in gaming of any kind, shall be proceeded against agreeably to the 7th article.

xi. Any person who shall demand or exact a garnish, beg, steal or defraud, shall be punished as directed by the 7th article.

xii. The prisoners who distinguish themselves by their attention to cleanliness, sobriety, industry and orderly conduct, shall be reported to the Inspectors, and meet with such rewards as is in their power to grant or procure for them.

xiii. The prisoners shall be furnished with suitable bedding, shall be shaved twice a week, their hair cut once a month, change their linen once a week, and regularly wash their face and hands every morning.

xiv. The prison shall be white-washed at least twice in the year, and oftener, if occasion requires; the floors shall be swept every morning, and washed on Wednesdays and Saturdays, from 20th of May to the 1st of October, and once a week for the remainder of the year.

xv. The sweepings of the prison shall be collected and deposited in a place for the purpose, and removed once in every two weeks; the necessaries shall also be cleansed daily.

xvi. The yards of the prison shall be kept free from cows, hogs, dogs, and fowls.

xvii. The physician for the time being shall keep a register of the sick, their disorders, and his prescriptions; and shall render his accounts for the examination and allowance of the Inspectors at each of their quarterly meetings.

xviii. At the performance of divine worship, all the prisoners shall attend, except such as may be sick.

xix. The turnkey, deputies and assistants shall be tradesmen, in order that the trades and employments within the house shall be more effectually and profitably executed.

xx. All prisoners committed as vagrants, and who have been convicts, shall be confined in the cells during their commitment.

xxi. No provision, other than the prison-allowance, shall be furnished to a convict or vagrant, without the permission of the Visiting Inspectors.

xxii. There shall be wardens appointed by the Visiting Inspectors, whose duty it shall be to keep the windows, passages, yard, and privies clean, and who also shall be lodged, and fed in a room by themselves.

xxiii. Runaway or disorderly apprentices and servants shall be sepa-

rately fed, lodged, and employed, and the keeper shall give notice to their masters or mistresses, at the time of their commitment, of the charge that will accrue for their daily maintenance, who may at their option agree to pay the same, or provide the necessary food themselves.

xxiv. The charge for the maintenance of slaves shall be the same as that of apprentices or runaways.

xxv. The diet of prisoners shall be—

on Sunday, one pound of bread, and one pound of coarse meat made into broth.

Monday, one pound of bread, and one quart of potatoes.

Tuesday, one quart of Indian meal made into mush.

Wednesday, one pound of bread, and one quart of potatoes.

Thursday, one quart of Indian meal made into mush.

Friday, one pound of bread, and one quart of potatoes.

Saturday, one quart of Indian meal made into mush.

Besides the above, a half pint of molasses shall be distributed to every four prisoners, on every Tuesday, Thursday, and Saturday.

Signed and approved, &c. as directed by law, 26th of February, 1792.

Directions for the Inspectors, &c. of the gaol of the city and county of Philadelphia.

WHEREAS, by a "Supplement to the penal laws of this state," it is enacted, "that the Prison Inspectors, appointed in pursuance of the act in such case provided, and of the said supplement, shall have power, with the approbation of the Mayor, two Aldermen of the said city, and two of the Judges of the Supreme Court, or two of the Judges of the Common Pleas of Philadelphia county, to make rules and regulations for the government of all convicts confined in the said prison, not inconsistent with the laws and constitution of this commonwealth."

It is therefore ordained, that the said Inspectors, seven of whom shall be a quorum, shall meet at the prison, quarterly, on the first Mondays in January, March, June, and September; and on every second Monday throughout the year...and, may also be specially convened by the Visiting Inspectors, when occasion requires. At their first meeting, they shall appoint two of their members to be Visiting Inspectors; one of whom shall serve for one month, and the other for two months, continuing

to make a fresh appointment to this office monthly.

Visiting Inspectors.

The *Visiting Inspectors* shall attend at the prison together at least twice in each week, and oftener if occasion requires; at which times they shall examine into and inspect the management of the prison, the conduct of the keeper, deputies and assistants: They shall also carefully enquire into, and report the conduct and disposition of the prisoners, and see that they are *properly* and *sufficiently* employed; that proper attention to cleanliness is observed; that due enquiry be made respecting the health of the prisoners, and that their food is served in quantity and quality, agreeably to the directions of the Board; that the sick are properly provided for, and that suitable cloathing and bedding are furnished to ail.—They shall hear the grievances of the prisoners, receive their petitions, and bring forward the cases of such, whose conduct and circumstances may appear to merit the attention of the Board.—They shall be careful to prevent improper out-door communications with the prisoners; that no spirituous liquors be admitted on any pretext whatever, except by order of the physician.—That no intercourse be admitted between the sexes.—That the regulations of the Board, respecting the distribution of the prisoners, according to their characters and circumstances, be attended to.—That proper means be used to promote religious and moral improvement by the introduction of useful books, and procuring the performance of divine service, as often as may be.

They shall from time to time report to the commissioners of the county, all such prisoners who have been sent from other counties, and have incurred a charge for their maintenance more than the profits of their labour will defray, in order that compensation may be had as the law directs.

They shall cause fair returns to be made out, and laid before the Board monthly, of all the prisoners, their crimes, length of confinement, by whom committed, when and how discharged, since the preceding return.

They shall attend to the keeper, deputies and assistants, by observing their treatment of the prisoners, and suffer no persons addicted to liquor, making use of prophane swearing, or other improper language to be employed on this duty.

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They shall constantly bear in mind, that all men are free, until legal proof is made to the contrary; they will therefore take care that no person is held in confinement, on bare suspicion of being a runaway slave; and those persons who are actually slaves, and not applied for by proper claims within a limited time, shall be returned to the Supreme or other proper court for a *habeas corpus* to remove them according to law; and generally they shall see that the present and subsequent directions of the Board be carried into effect.

Keeper of the Prison.

The *Keeper of the Prison*, besides attending to the safe keeping of the prisoners, shall carefully inspect into their moral conduct, shall enjoin a strict attention to the regulations, relative to cleanliness, sobriety and industry, and be careful to avoid that penalty which is incurred by suffering a criminal to escape. He shall also, with the approbation of two of the Inspectors, provide a sufficient quantity of stock and materials, working tools, and implements for the constant employment of the prisoners. He shall deliver out their work and receive it from them by weight or measure, as the case may be, in order that embezzlement or waste may be prevented, by the prisoners; and by every laudable means in his power make their labour as profitable as possible. He shall, as the law directs, keep separate accounts for all convicts sentenced to labour six months and upwards, in which the expense of cloathing and subsistence shall be charged, and a reasonable allowance for their labour be credited; these accounts shall be balanced at short periods, in order that the prisoner, at his discharge, may receive the proportion, if any, that is due to him.

He shall cause all accounts concerning the maintenance of the prisoners to be entered in a book or books for the purpose, and shall also keep separate accounts of the stock and materials purchased by him; shall take proper vouchers wherever money is expended; shall regularly credit the materials manufactured and sold, mentioning to whom and when disposed of; and at every quarterly meeting of the Board, shall exhibit his accounts and vouchers for their approbation and allowance.

Turnkey.

The *Turnkey* shall admit no persons except the Inspectors, Keeper, his deputies, servants or assistants, Officers and Ministers of Justice, Counsellors or Attornies at Law, employed by a prisoner, Ministers of the Gospel, or persons producing a written licence signed by two of the said Inspectors; and the latter only, in his presence or some one of the officers of the prison. He shall prevent the admission of any spirituous liquors or any other improper article to the prisoners, and on every attempt of this kind that may be detected, he shall make discovery thereof, in order that the penalty inflicted by law may be recovered.

Keeper's Deputies, &c.

The *Keeper's Deputies and Assistants* shall be careful to preserve cleanliness, sobriety and industry among the prisoners; to inform them of the rules of the house, and to enjoin an observance of them by mild yet firm measures; they shall be careful to prevent embezzlement, waste or destruction of implements or materials; they shall constantly reside in the house, and inspect the conduct and labour of the prisoners—Report the negligent, profane or disorderly, (who shall be removed,) and the industrious, quiet and exemplary, that they may be recommended by the Visiting Inspectors, who have it in charge to bring such to the favourable notice of the Board.

Watchmen.

The *Watchmen* shall continue in the prison all night, two of whom shall be within the iron gate, and two in the Inspector's room—They shall patrol the inside constantly, and strike the bell every hour—They shall report any remarkable occurrence of the night, to the Clerk of the prison, on the succeeding day, who shall commit the same to writing, and lay it before the Visiting Inspectors, at their next meeting; and as the safety of the prison so much depends on their vigilance and attention, it is required, that no circumstance shall prevent the performance of their regular and frequent rounds.

Signed and approved as directed by law, 26th of February, 1792.

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